

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CENTRAL
RAILROAD, INC.,

Plaintiff/Counterdefendant,

-v.-

Civil Action No. 04-30235-MAP

SPRINGFIELD TERMINAL
RAILWAY COMPANY, et al.,

Defendants/Counterclaimants.

**DECLARATION OF ROGER D. BERGERON IN OPPOSITION TO
PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Roger D. Bergeron declares as follows:

1. I am employed by the defendants/counterclaimants in this action, Springfield Terminal Railway Company and Boston and Maine Corporation (collectively, "ST/BM"), as Vice-President of Special Projects. I make this declaration in opposition to the motion for summary judgment filed by New England Central Railroad, Inc. ("NECR") both as a percipient witness and, pursuant to the Court's endorsed order of February 21, 2007, as an expert witness. To the extent the opinions expressed herein are considered those of an expert, they are within the bounds of reasonable engineering certainty and represent my professional opinion.

2. I have been employed by ST/BM and their predecessors for 36 years. My positions during that period have included trackman in the late 1960s, engineering surveyor and a construction inspector in the early 1970s, resident engineer in the mid-1970s, a track supervisor from the late 1970s to early 1980s, a roadmaster and engineer of track in the mid-1980s, an

engineer of production and construction until 1996, then assistant vice-president of engineering until 2006.

3. My current position includes responsibility for industrial development of railroad properties, track construction and design projects, preparing estimates for permitting commuter rail service on certain portions of ST/BM's track, and continuing responsibilities for overseeing track maintenance and construction. In that capacity, I am qualified under Section 213.7 of the Federal Railroad Administration ("FRA") regulations regarding track safety in general and regarding track inspection, renewal, and replacement in particular.

4. I have taken FRA and National Transportation Safety Board accident derailment courses, and am familiar with the FRA track safety standards (49 C.F.R. Part 213), the FRA Track Safety Standards Compliance Manual, an Association of American Railroads publication entitled *Train Derailment Cause Finding* and the Canadian Pacific handbook on the same subject. ST/BM generally follows the AAR publication in investigating derailments. In the course of my thirty-seven year career as a railroad employee, I have led or otherwise been involved in investigations of more than three thousand derailments, including several hundred that occurred on main lines.

5. In 1988, the Interstate Commerce Commission ("ICC") compelled the Boston and Maine Corporation to sell approximately forty-eight miles of the Connecticut River Line to the National Railroad Passenger Corporation ("Amtrak"), which immediately resold the property to the Central Vermont Railway. The ICC order, which ultimately was upheld by the courts, required that the new owner grant trackage rights to Boston and Maine.

6. Trackage rights are similar to the rights of a lessee of ordinary real property, giving the tenant railroad certain rights to operate trains over, and otherwise use, the tracks of the landlord railroad.

7. In February 1990, after Central Vermont and Boston and Maine were unable to agree upon the provisions of a trackage rights agreement, the ICC imposed a trackage rights order governing Boston and Maine's use of the Connecticut River Line (i.e., the TRO). The ICC decision is reported as *Amtrak—Conveyance of B&M in Conn River Line in VT & NH*, 6 I.C.C.2d 539 (1990) ("*Amtrak II*"). The TRO also covered several segments connecting to the transferred portion that already were owned by Central Vermont and over which Boston and Maine already had trackage rights.

8. The derailment that is the subject of this action occurred on a segment that was owned by Central Vermont before 1988 but that is subject to the TRO. The tracks subject to the TRO are referred to herein as "the Line."

9. Section 3.2 of the TRO makes CV "solely responsible for dispatching all operations over the Line and for the maintenance and repair of the Line, including the signals and the signal and dispatching system which controls operations on it," as well as for "keep[ing] the Line, *at all times* throughout the term of this Agreement or any extensions thereof, in not less than FRA Class II condition."

10. Section 7.1 of the TRO provides:

each party hereto shall be responsible for and shall assume all loss, damage or injury . . . to persons or property, including the cost of removing any trackage, repairing trackage and correcting environmental damage, which may be caused by its engines, cars, trains or other on-track equipment (including damage by fire originating therefrom) *whether or not the condition or arrangement of the trackage contributes in any manner or to any extent to such loss, damage or injury*, and whether or not a third party may have caused or contributed to such

loss, damage or injury, and for all loss or damage to its engines, cars, trains or other on-track equipment while on said trackage from any cause whatsoever...

The full text of the TRO is annexed hereto as Exhibit 1.

11. The TRO remains in force. ST/BM is the successor in interest to Boston and Maine. NECR, which is the plaintiff/counterdefendant in this action, is the successor in interest to Central Vermont.

12. In January 2006, in a proceeding between ST/BM and NECR, the Surface Transportation Board (“STB”), which is the successor to the ICC, ruled that Section 7.1 of the TRO does not absolve NECR of liability for damages caused by NECR’s gross negligence or willful misconduct. A copy of the STB’s decision is annexed hereto as Exhibit 2.

13. The TRO is not a contract between NECR and ST/BM. In fact, the predecessors of NECR and ST/BM who litigated *Amtrak II* disagreed over many terms of a proposed agreement—including Section 7.1. Indeed, that was the point of ST/BM’s petition for reconsideration that led to the STB’s January 2006 ruling. See Exhibit 3 hereto at 3-4.

14. The Federal Railroad Administration (“FRA”) has plenary responsibility for rail safety in the United States.

15. On June 8 and 9, 2004, the Line was inspected, under the FRA’s Automated Track Inspection Program, by a T-2000 track geometry car (the “Inspection”). NECR personnel accompanied the inspection car so that they could take remedial actions in light of the defects identified and relay information about such defects and remedial actions to NECR’s dispatchers. See Exhibits 4 (at 6:6-10) and 5 (at p. 7—Bates #803) hereto.

16. During such an inspection, instruments on the inspection car automatically find and record defects, locating each defect using the Global Positioning System (“GPS”). The system for relating defects identified by the inspection car to physical landmarks such as mile

posts and bridges is not automated; instead, the railroad's track inspector calls out landmarks as they are passed and an inspector or operator punches a button to mark each such location. The imprecision of the "call-out," as well as the reaction time for the individual who pushes the marker button, means that that results of such an inspection typically are not precise as to related landmarks such as mile posts (though they are relatively precise as to GPS readings).

17. It is normal practice when the track owner's inspection personnel revisit each defect site to begin by examining the track for several hundred feet on either side of the marked point. In the case of a post-derailment inspection involving a possible crosslevel defect, standard industry practice is to consider the track segment from 300 feet before the derailment to 100 feet after the derailment. See Exhibit 6 hereto at V-9. Moreover, a crosslevel defect of the sort involved in the Derailment is by definition at least sixty-two feet long. Thus, even were the inspection car reading precise, the defect could extend for at least sixty-two feet in either direction from the noted spot.

18. The Inspection revealed 251 defects in a 230-mile stretch of track. Particularly troubling was the fact that 189 of the defects were such that the related track was in *less* than FRA Class 2 condition and that seventy-four defects were such that the related track was in FRA Class Zero (i.e., they were not in condition to have trains running over them). See Exhibits 5 and 7 hereto.

19. The defects identified by the Inspection included a crosslevel defect, also known as a warp, in the vicinity of Milepost ("MP") 10.16. See Exhibit 4 at 7:2-3. The warp near MP 10.18 exceeded the limit established by the FRA's track safety standards. Thus, NECR was aware of this defect at least twenty-five days before the Derailment occurred on July 3, 2004. Moreover, the FRA inspection report included the text of § 213.63 and its note 2. See Exhibit 7

hereto at Bates #809. NECR's track inspector agreed with the test car's determination of a warp defect in the vicinity of MP 10.18. See Exhibit 8 hereto at 10:5-13.

20. Because the crosslevel defect exceeded one and one-quarter inches over the length of track specified in the FRA regulation, note 2 to § 213.63 rendered the segment Class 1 track rather than Class 2.

21. A recognized authority on the subject of derailment, *Train Derailment Cause Finding*, states that crosslevel (warp) defects are among the more common types that "cause or contribute to a derailment."

If a car with a high center of gravity is traveling at a speed such that its trucks are directly over successively low joints at the same time as the car rocks to the side of the low joints, the rocking will become more and more severe until the wheels on the opposite side of the low joints lift off the rail. *The speed at which wheel lift occurs is between 10 and 25 miles per hour.*

See Exhibit 6 hereto at V-8 and V-9.

22. According to NECR's roadmaster, Mike Lawyer, "[a] warp would be that [the height difference between the two rails] changes too drastically in a 62-foot segment," and "[t]he rail car could rock if there is too much of a change in a certain distance at a certain speed." See Exhibit 9 hereto at 19:9-20:7. NECR's track supervisor conceded that a warp can cause harmonic rock and that under certain conditions, that in turn can cause wheel lift. See Exhibit 4 at 9:20-10:15.

23. Defects like this do not occur at *points* but occupy *segments* of track—including, in this instance, the segment where the wheels of one car first left the track.

24. As a result of the Inspection, NECR placed slow orders at numerous locations on the Line, including the vicinity of MP 10.16. Normal industry practice, including that of the

FRA and ST/BM, is not to impose slow orders on *fixed points* but on *segments* of track, having varying length depending upon the defect in question. This NECR did not do.

25. A comparison of NECR's Daily Operating Bulletins for June 10 and 11, 2004, reveals that the slow order for the MP 10.16 vicinity, which set a "Class 2" speed limit of twenty-five miles per hour, was not established until two days after the Inspection. Compare Exhibit 10 hereto (at p. 3 of 5—Bates #1397) with Exhibit 11 (at p. 4 of 7—Bates #1403). This delay is highly improper and dangerous, as the ironclad industry practice is to address any defect, at least on a temporary basis, before the next train uses the defective track segment.

26. The NECR Daily Operating Bulletin for July 3, 2004 shows that the slow order remained in effect on the day of the Derailment. See Exhibit 12 at p. 4 of 6—Bates #000018. The warp had not been repaired when the Derailment occurred, see Exhibit 9 hereto at 23:11-24:4, and indeed had worsened over the month since the FRA inspection.

27. The proper remedial action would have been tamping up the ballast under the low (inside) end of the ties. This could have been accomplished using a self-lining, self-leveling tamper or, at least temporarily, manually by several workers using basic track tools. See Exhibit 9 hereto at 28:2-29:8. Neither action was taken. The excuse offered by NECR's Richard Boucher was that the operator of NECR's tamping machine went on vacation. See Exhibit 4 hereto at 9:3-11.

28. NECR took the easy—and improper—way out by dropping the segment to Class 2 status, which meant a maximum freight-train speed of twenty-five miles per hour. Ironically, the improper slow order issued by NECR probably created a *greater* derailment risk than would have existed had the segment remained at Class 3—a class whose maximum speed for freight

trains of forty miles per hour is well above the harmonic-risk range of 12-25 mph addressed by note 2 to § 213.63.

29. NECR's track supervisor, Richard Boucher, measured the defect at MP 10.16 on June 8, 2004, but did not measure it again between then and the occurrence of the Derailment more than three weeks later. See Exhibit 4 at 11:3-11. Moreover, Mr. Boucher admitted that it would not have been the practice of NECR's track inspection department to do so. See Exhibit 4 hereto at 11:12-16. Indeed, NECR's track inspector Rick Boucher did not even record the defect on his subsequent inspection reports, see Exh. 8 hereto at 8:18-9:1; 21:21-25:19, though the FRA's track safety rules require such recording on *each* track inspection report until the defect has been corrected, see Exhibit 13 hereto at 5:140, first full ¶.

30. Therefore, NECR had no way of knowing whether the condition had worsened, despite that the FRA recognizes that such an occurrence is a distinct possibility and therefore expects re-measurement *regularly* until the defect has been corrected. NECR's Richard Boucher conceded that this defect could have caused wheel lift of the type that led to the Derailment. See Exhibit 4 at 9:20-12:6.

31. In the early hours of July 3, 2004, a nineteen-car ST/BM freight train set out in a southerly direction on the Line from White River Junction, Vermont. As the train rounded a curve—the curve with the warp defect—near MP 10.18, one pair of the four wheels of one truck of a boxcar lifted off the rails.

32. This “wheel lift” occurred due to the combination of the speed of the train (approximately twenty-three miles per hour), excessive superelevation (more than six inches), the warp (or “crosslevel”) defect, harmonic rocking occurring in that speed range, and the relative lack of centrifugal force occasioned by that speed range in the presence of that type of

defect. NECR's Michael Lawyer testified that wheel lift is when "the flange of the wheel is allowed to come up onto the rail, or partially onto the rail head, as opposed to riding on the gauged side of the rail." See Exhibit 9 hereto at 22:2-6. Had NECR made the FRA-required follow-up inspections and measurements, NECR would have been aware of all these factors.

33. Approximately twenty-two feet after lifting, the pair of wheels settled back down. Instead of returning to being flush against the rail heads of their respective rails, however, one wheel of the pair came down on the ties and tie plates outside its rail and the other came down on the ties and tie plates inside the opposite rail. See Exhibit 14 hereto at 53:3-20.

34. My investigation of the marks in and around the track structure showed that the boxcar in question remained upright and, to any observer of the moving train, aligned with the other cars as the train continued southward. Specifically, my investigation revealed that the two wheels remained tight against their respective rails, but on the wrong side of the rails—a distance of only a few inches from where they were supposed to be. The now-misaligned wheels of the truck caused damage to the ties and tie plates over which they traveled.

35. The ST/BM crew did not learn immediately that the pair of wheels had come off the rails. The weather was foggy, see Exhibits 15 (at 17:2-21; 39:7-16), and 16 (at 20:5-21) hereto, and the computerized records show that the lead locomotive's ammeter did not reflect unusually high amperage for a train that was accelerating up a 0.50 percent grade after passing a slow-ordered section of track, see Exhibit 17 hereto.

36. Furthermore, the train crew did not feel any unusual jostling or anything else out of the ordinary. See Exhibits 15 (at 20:14-17), and 16 (at 97:17-98:3) hereto.

37. Visibility was between 240 and 300 feet. See Exhibits 15 (at 18:13-18; 39:10-17), and 16 (at 85:5-86:3) hereto. Freight cars are approximately sixty feet long. The boxcar in

question was the sixth car of the train (the eighth car, if one counts the two locomotives at the front), and hence was more than 400 feet behind the locomotive where the operator and conductor were located. This meant that the crew could not consistently see the sixth car. See Exhibit 15 hereto at 57:9-11. In any event, my examination showed that the boxcar remained upright and was not noticeably out of alignment with the rest of the train. See Exhibit 16 hereto at 86:23-87:14. The engineer testified that he last looked back to check the train consist shortly before the cars went onto the ground at MP 5.7. See Exhibit 15 hereto at 38:15-39:6.

38. At approximately MP 5.7, the pair of derailed wheels reached the “frog” portion of a switch near Hartland, Vermont, at which time the truck turned sideways and the boxcar in question went onto the ground, taking with it the six cars behind it in the train. See Exhibit 15 hereto at 25:22-27:2.

39. Prior to this point there was no warning to the crew that a pair of wheels had derailed. See Exhibits 15 (at 33:9-11; 58:3-13), and 16 (at 34:16-20; 62:23-63:17; 97:17-98:3) hereto.

40. I investigated the Derailment on behalf of ST/BM. I had little difficulty finding the crosslevel defect in the vicinity of MP 10.18 that the FRA track geometry inspection had identified.

41. I determined that because of the relatively slow train speed (not in excess of twenty-five miles per hour) and the excessive superelevation of the outside rail on the curve at MP 10.18, most of the weight of the boxcar in question was over the inside rail of the curve. This meant that the opposite wheels—those on the outside rail of the curve—were bearing an unusually light load; that fact, plus the previously noted deviation in track alignment, plus the

harmonic motion that the FRA track safety regulations warn against at Class 2 speeds, caused one of those wheels to lift off the outside (high) rail of the curve at approximately MP 10.18.

42. An additional factor was that the track where the pair of wheels initially came off (around MP 10.18) was misaligned by approximately one and one-quarter inches. Although my inspection occurred after the Derailment, the physical evidence demonstrated that the misalignment was not of recent vintage, but had antedated the Derailment.

43. Therefore, the area around MP 10.18 had both an alignment defect and a crosslevel defect. As noted at page 6-6 of the Canadian Pacific derailment manual, which is widely used in the railroad industry, each type of defect can aggravate the other type, such that “[t]he combination of forces from alignment and surface defects in the same location . . . has a cumulative effect much greater than either defect alone.” See Exhibit 18 hereto at 6-6.

44. All of these factors were within the control of NECR, which had known at least since the Inspection approximately four weeks earlier that a dangerous condition existed at MP 10.18. Specifically, NECR knew that the elevation of the outside rail at MP 10.18 was higher than permitted by Section 213.63 of the FRA track safety regulations. Note 2 to that section also provides that because of the danger of harmonic rocking, the presence of such superelevation requires that the speed limit *not* be that for Class 2 track—namely, twenty-five miles per hour—but that for Class 1 track, which is ten miles per hour. Section 213.63, including note 2, was reprinted in the FRA inspection report of June 8, 2007. See Exhibit 7 hereto at Bates #809.

45. NECR knew that this defect required correction but had failed to correct it. See Exhibit 4 hereto at 6:14-9:11. The defect could have been corrected by “tamping up” the ballast under the inside (lower) rail of the curve so that the crosslevel difference in elevation was within the limit established by the track safety regulations. See Exhibit 4 hereto at 8:15-22. The excuse

offered by NECR for not doing this is that the operator of their tamping machine had gone on vacation. See Exhibit 4 hereto at 9:3-11. NECR has offered no excuse for not using the temporary expedient of having workers with basic track tools add ballast (rock) beneath the lower ends of the relevant ties.

46. In conducting my investigation, I noticed that at least one joint of the lower rail at the MP 10.18 location was sinking into the mud. Moreover, the ballast at that point contained mud and contaminants and therefore did not properly transmit load to the subgrade. This is an improper condition because it limits the ability of the track structure safely to handle the load. Remarkably, NECR's track inspector could not recall noticing these conditions at the location in question. See Exhibit 8 hereto at 13:4-7.

47. NECR potentially had available to it a second temporary option—namely, to slow-order that section of the Line to a *safe* speed, as permitted by the track safety regulations.

48. NECR issued a slow order but did so without taking into account the disastrous potential combination of the crosslevel and alignment defects around MP 10.18 with a Class 2 speed limit of twenty-five miles per hour. NECR's failure to do so violates a basic element of track safety. That is, NECR knew, or was indifferent to, the fact that the combined effect of the crosslevel defect, the alignment defect, and the Class 2 speed limit created a high likelihood of a derailment.

49. Given all this, the question was not *whether* a derailment would occur under those conditions, but *when* it would occur.

50. Of particular interest is the fact that NECR has not suggested that my analysis of the cause is incorrect. When deposed, for example, NECR's track inspector (Rick Boucher) and

roadmaster (Michael Lawyer)—surprisingly—testified that they did not know the cause of the Derailment. See Exhibits 8 (at 18:1-20) and 9 (at 32:15-33:8) hereto.

51. Richard Boucher, NECR's track supervisor, testified that he did not investigate the cause of the Derailment and that NECR's Rick Boucher and Michael Lawyer did that. See Exhibit 4 hereto at 13:6-17.

52. Rick Boucher testified that although he participated in the NECR's investigation, he did not know the cause. See Exhibit 8 hereto at 17:22-18:20.

53. Finally, Michael Lawyer, who was offered by NECR as its corporate witness on track conditions before and after the Derailment, testified he did not know whether NECR had determined a cause of the Derailment. See Exhibit 9 hereto at 32:15-33:8.

54. I assume that the foregoing testimony was truthful and not an effort to obscure the cause of the Derailment. As such, however, it bespeaks either a concession that my analysis is correct or a shocking lack of attention to track safety by NECR.

55. NECR's track inspector admitted that although he was aware of the defect at MP 10.16, he did not note it (or, presumably, measure it) in any of his supposedly semiweekly inspection reports because he had not been the individual who *found* the defect. See Exhibit 8 hereto at 8:18-9:1; 21:5-25:19. This is grossly improper. Section 213.241 of the FRA's track safety regulations, as well as the FRA's track safety manual, require that *each* inspection report record a defect from the time it is initially discovered until the time it has been corrected. See Exhibit 13 hereto at 5.140, first full ¶). The reason, naturally, is that track defects do not correct themselves; indeed, they typically worsen if not attended to. Only by reexamining a known defect at each semiweekly inspection can the track owner be certain that matters are not deteriorating further.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed April 23, 2007.

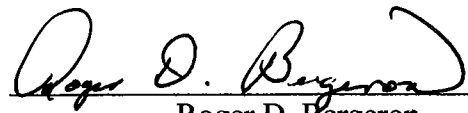

Roger D. Bergeron

EXHIBIT 1

6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.)

Page 13

(Cite as: 6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.))

if B & M's service falls below such level. In light of our clarification that B & M need not provide three-day per week service if shippers have not so requested, proof of compliance or noncompliance with this condition will depend on shipper evidence.

FN7. Also, because no party disputes sections 1.6, 1.7, and 1.8 of the Interim Agreement, we will adopt those provisions.

FN8. In Amtrak, as discussed supra, we imposed a \$75,000 cap beginning in year 4 to restrict Amtrak to certain terms and conditions that it originally proposed. Because Amtrak's proposal did not set terms for a cap in years 1-3, we made no restriction at that time and allowed parties to negotiate these terms. However, since parties are unable to negotiate their own terms, we will establish here the appropriate cap for years 1-3.

FN9. As previously discussed, the cap is \$142,000 for years 1-3.

FN10. See Joint Verified Statement of Robert L. Banks and Charles H. Banks, April 1, 1988, at 47.

FN11. B & M observes that the Amtrak/CV trackage rights proposal of April 4, 1988, expressly provided that "B & M shall not be required to pay any rental or interest payments to CV for [B & M's] use of and operation over the Line ***." Verified Statement of James L. Larson.

Also, it notes that the rebuttal documentation of Amtrak/CV stated that "as a result of this proceeding, Amtrak (or its successor) will incur costs for which it will receive either partial compensation or none at all ***. Amtrak (or its successor) will not be compensated to any extent in any year for interest rental ***. Stated differently, there are ownership costs currently incurred by B & M which, in the future, will be incurred by Amtrak (or its successor)." Rebuttal Joint Verified Statement of Robert L. Banks and Charles H. Banks, July 13, 1988, at 4 (emphasis in original).

FN12. B & M used the Commission's projected 46%/54% allocation of traffic between B & M and CV, respectively, Amtrak, supra, at 793, Table II, n. 1, to calculate its share of the proposed capital costs in any given year to be $(\$211,938 \times .46) = \$97,491$.

The present value of \$97,491 in year 6 is $(\$97,491)/(1.116)^6 = \$50,513$. The present value of a perpetual stream of \$97,491 in years 7 and beyond is $(\$50,513/.116) = \$435,456$. $\$50,513 + \$435,456 = \$485,969$.

FN13. Amtrak estimated that B & M would incur maintenance expenses of \$536,000 per year. CV argues that the Commission adopted instead a \$400,000 per year cost savings figure that represented the lower annual cost Amtrak predicted to maintain the line after the major capital infusion of over \$3 million. We note that the \$136,000 difference would affect the GCV, not the \$75,000 payment cap set for the trackage rights.

FN14. In addition, we note that CV also refers in that section to the mandatory arbitration provision it proposes to add as section 9.9. Since we reject involuntary arbitration and decline to adopt section 9.9, as discussed infra, we will delete CV's proposed reference.

FN15. CV also asserts its willingness to indemnify B & M for any costs of wrongful exclusion imposed on B & M in a grievance proceeding in which CV has had the opportunity to explain the basis for its action to exclude that employee.

FN16. Of course, the Commission reserves the right to impose a new agreement for the trackage rights if it finds it is in the public interest to do so. See *Thompson v. Texas-Mexican R. Co.*, 328 U.S. 134 (1946).

FN17. We note that B & M initially argued that it should be indemnified by CV with regard to any claims involving these plans. CV has indicated that it remains open to settlement discussions on this point and may have already initiated discussions on that topic.

*559 APPENDIX

TERMS AND CONDITIONS OF TRackage
RIGHTS IMPOSED BY THE INTERSTATE
COMMERCE COMMISSION GOVERNING THE
USE BY BOSTON AND MAINE
CORPORATION OF CERTAIN LINES OF
CENTRAL VERMONT RAILWAY, INC.

6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.)

Page 14

(Cite as: 6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.))

0. DEFINITIONS

****17** As used herein, the following capitalized terms have the following meanings (any other capitalized terms being defined in context hereafter):

0.1 "Agreement" means the terms and conditions of trackage rights as a whole set forth herein, as though the instant terms and conditions had been agreed to contractually by B & M and CV.

0.2 "Amtrak" means the National Railroad Passenger Corporation.

0.3 "B & M" mean Boston and Maine Corporation, a corporation with its principal office at Iron Horse Park, North Billerica, MA 01862.

0.4 "CCR" means Claremont and Concord Railway (including its successors and assigns).

0.5 "Conveyance Date" means September 9, 1988, the date on which B & M conveyed the Former B & M Line to Amtrak, and on which Amtrak conveyed the same to CV, pursuant to the Order.

0.6 "CV" means Central Vermont Railway, Inc., a corporation with its principal office at 2 Federal Street, St. Albans, VT 05478.

0.7 "CV Lines" means the approximately 13.4-mile rail line between White River Junction, Vermont, and Windsor, Vermont, and the approximately 10.6-mile rail line between Brattleboro, Vermont, and East Northfield, Massachusetts, both of which have belonged to CV since before the Conveyance Date.

0.8 "Former B & M Line" means the approximately 48.8-mile rail line between Windsor, Vermont, and Brattleboro, Vermont, conveyed by B & M to Amtrak, and by Amtrak to CV, on the Conveyance Date pursuant to the Order.

0.9 "GMRC" means the Green Mountain Railroad Corporation (including its successors and assigns).

0.10 "ICC" means the U.S. Interstate Commerce

Commission.

0.11 "Line" means the CV Lines and the Former B & M Line together.

0.12 "Order" means the decision of the ICC in National Railroad Passenger Corporation-Conveyance of Boston and Maine Corporation Interests in Connecticut River Line in Vermont and New Hampshire, dated August 4, 1988, served August 9, 1988, and published at pages 761 through 817 of volume 4 of the ICC Reports, Second Series.

0.13 "ST" means the Springfield Terminal Railway Company (including its successors and assigns).

*560 1. GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions of this Agreement, B & M shall have the nonexclusive right to operate B & M's trains, locomotives, cars and equipment with B & M's own crews over the Line, as more particularly defined as follows:

All main line track and passing sidings between a point at the interlocking at East Northfield, Massachusetts (approximately B & M MP 49.67 and CV MP 110.51) to the Bank switch at the termination of B & M ownership at White River Junction, Vermont (approximately CV MP 13.40).

1.2 B & M shall have only overhead running rights over the CV Lines.

1.3 B & M shall have the exclusive right to serve all existing shippers and shippers' facilities that were located on the Former B & M Line as of the Conveyance Date, including any and all new shippers that locate at such existing facilities after the Conveyance Date, provided that B & M makes available a minimum three day per week service along the Line. B & M must consult with the shippers and ensure their needs are met up to three day per week service.

****18** 1.3.1 For purposes of this Section 1.3, "existing shippers and shippers' facilities" shall mean industries and facilities at rail sidings which

6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.)

Page 15

(Cite as: 6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.))

received or tendered rail shipments during the twelve months immediately prior to the Conveyance Date.

1.3.2 For purposes of this Section 1.3, "three day per week service" shall mean the provision of local set-off and pick-up service to shippers on the Former B & M Line at least three times per week (Monday through the following Sunday) in each direction.

1.3.3 CV shall be permitted to commence service to existing shippers and shippers' facilities upon B & M's failure to make available three day per week service during two weeks out of any four week period, unless such failure is excused by Section 9.6.

1.4 Except as provided in Section 1.3, CV and B & M shall each have the right to compete for and serve the following shippers and shippers' facilities on the Former B & M Line:

(a) shippers and shippers' facilities located on the Former B & M Line which have not received or tendered rail shipments during the twelve months immediately prior to the Conveyance Date;

(b) any other new shippers;

(c) any existing shippers and shippers' facilities to which B & M does not provide a minimum three day per week service, as specified in Section 1.3.

1.4.1 CV shall, upon request by B & M, provide reciprocal switching to permit B & M to serve such shippers and shippers' facilities as B & M may serve hereunder. CV shall not be required to switch cars on B & M's behalf at shippers' facilities which CV serves by virtue of B & M's failure to make available a minimum three day per week service along the Line as specified by Section 1.3, but B & M shall retain the right to provide service directly to such shippers and shippers' facilities. B & M shall pay to CV a per switch charge not greater than 180% of the CV variable cost of providing such switching service computed using CV's costs computed in accordance with formulas generally used or accepted in ICC proceedings.

1.5 CV and B & M shall each have the right to compete for and to interchange traffic at Bellows Falls, Vermont, with GMRC and at Claremont

Junction, New Hampshire, with the *561 CCR. B & M shall have the exclusive right to interchange traffic at Charlestown, New Hampshire, with the ST.

1.6 B & M shall have the right of entry over the Line for any and all B & M employees, agents or representatives, machinery, vehicles or equipment which B & M may deem necessary or convenient for the purposes of inspecting the Line, clearing any derailments or wrecks of B & M trains on the Line or otherwise conducting its operations over the Line.

1.7 B & M shall without charge to CV dispatch the interlocking CPR 50 located at East Northfield, Massachusetts, until seven (7) days after CV notifies B & M that CV is prepared to assume such responsibility and all applicable regulatory requirements have been satisfied.

****19** 1.8 Except as provided herein, this Agreement does not diminish in any way CV's right to use the Line, or CV's right to lease or otherwise allow another carrier to use the Line.

2. TERM AND TERMINATION

2.1 The term of this Agreement shall commence as of 7:00 a.m. Eastern Time, on the Conveyance Date.

2.2 Except as provided in Section 2.3, and subject to the provisions of this section, the term of this Agreement shall be perpetual. After 20 years from the Conveyance Date, either party to this Agreement may seek modifications from the other and, if satisfactory modifications are not agreed to after a reasonable period for negotiation, may apply to the ICC for modifications. Nothing in this section shall authorize the ICC to impose arbitration requirements upon either party to this Agreement.

2.3 B & M may terminate this Agreement immediately upon notice to CV.

2.4 Notwithstanding the foregoing, the parties hereby acknowledge and agree that B & M has appealed the Order, and that in the event the Former B & M Line is reconveyed to B & M in connection with or resulting from such appeal, this Agreement shall terminate upon such reconveyance, and that

6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.)

Page 16

(Cite as: 6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.))

thereafter the terms and conditions of the April 1, 1985 and January 1, 1930 Trackage Rights Agreements shall govern their operations over and use of the Line, and such agreements shall be deemed re-executed in their current forms.

3. COMPENSATION

3.1 B & M shall have no obligation to pay for or contribute in any way towards the cost of upgrading of the Former B & M Line, except as provided in Section 3.7.

3.2 Except as provided in Section 1.7, CV shall be solely responsible for dispatching all operations over the Line and for the maintenance and repair of the Line, including the signals and the signal and dispatching system which controls operations on it. CV shall keep the Line, at all times throughout the term of this Agreement or any extensions thereof, in not less than FRA Class II condition.

3.3 In full satisfaction of any and all obligations of B & M to pay for the trackage rights provided herein or contribute towards the costs of dispatching, maintenance and repair of the Line (including the maintenance, repair and operation of the signals and the signal and dispatching system which controls operations on it), B & M shall pay to CV 20.1¢ per car mile (whether loaded or empty including locomotives, cabooses and work equipment) of traffic actually operated by B & M (or its assignee) over the Line. Notwithstanding the foregoing, the sum of such payments in respect of the Former B & M Line shall not exceed one hundred forty-two thousand dollars (\$142,000) per year during the first three years this Agreement is in force *562 and shall not exceed seventy-five thousand dollars (\$75,000) in any year thereafter; provided, however, that the foregoing limitation shall not apply if the annual gross traffic volume on the Former B & M Line attributable to B & M's overhead or local service, including traffic for interchange to GMRC, CCR, or ST, exceeds 32,500 carloads. Locomotives, cabooses and work equipment shall not be included in determining whether traffic attributable to B & M has exceeded 32,500 carloads in a given year. In any year that the amount of traffic attributable to B & M on the Former B & M Line exceeds 32,500 carloads, B &

M shall pay CV as additional compensation 20.1¢ per car mile for all the cars in excess of 32,500 cars, whether loaded or empty, including locomotive, cabooses and work equipment.

****20** 3.4 All payments to be made by B & M and CV under this Agreement (including the caps set forth in Section 3.3) shall be adjusted effective March 31, 1989, and semi-annually thereafter, for price level changes from July 1, 1988, (using Second Quarter 1988) based on the relationship of the most recent quarter's Association of American Railroads (AAR) Eastern District, Quarterly Indices of Chargeout Prices and Wage Rates (Table C)-"Material prices, wage rates and supplements combined (excluding fuel)" to comparable indices of the quarter six months previous. The first adjustment to be made shall be based on the comparison of the Fourth Quarter 1988 index value to the Second Quarter 1988.

3.5 B & M shall have responsibility for and shall report and pay directly to the owner of the cars, all mileage, car hire and other charges accruing on cars in B & M's trains on the Line.

3.6 CV shall issue its bill to B & M for the payments specified by Sections 1.4 and 3.3 by the fifteenth (15) day of each month for the traffic transported during the preceding calendar month. B & M shall pay to CV the amount shown on such bill by the last day of the month in which such bill is issued. B & M shall not be required to pay mileage charges attributable to its operations over the Former B & M Line once payments made in the preceding months of that year with respect to those operations equal the payment cap as adjusted in accordance with Section 3.4 for that year, until traffic attributable to B & M's operations over the Former B & M Line exceeds 32,500 carloads for that year. Payments not received by CV by such last day of the month in which the bill is issued will accrue interest at the rate of one and one-half (1.5%) percent per month for each month or portion of a month by which the payment is late.

3.7 In the event that CV is required to undertake any major capital projects which may become necessary due to changes in applicable local, state or federal statutes, ordinances or regulations, or by catastrophic occurrences on the Line, including but

6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.)

Page 17

(Cite as: 6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.))

not limited to floods or destruction of bridges, B & M or its assignee shall pay its proportionate share of the expenditures actually made by CV for such capital projects based upon the percentage of total car miles on the Line attributable to B & M's (or its assignee's) average traffic volume during the preceding five (5) year period.

4. ADDITIONS AND ALTERATIONS

4.1 CV shall pay for and be responsible for the construction, maintenance, repair and renewal of any additional connections to the Line which it may require.

4.2 If B & M determines that changes in or additions and betterments to the Line, including changes in communication, dispatching or signal facilities as they existed immediately prior to the Conveyance Date, are required to accommodate B & M's operations beyond that required by CV to accommodate CV's and Amtrak's operations over the Line, B & M shall pay for the construction of such additional or altered facilities, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities. Notwithstanding the *563 foregoing, CV shall have the right to approve of any such addition or alteration prior to its construction, which approval shall not be unreasonably withheld, and such addition or alteration shall be constructed in such a manner as to minimize interference with CV's or Amtrak's operations over the Line.

5. SCHEDULING OF TRAINS AND MAINTENANCE; OPERATING RULES

****21** 5.1 The trains, locomotives, cars and equipment of B & M, CV, Amtrak, and any other present or future user of the Line or any portion thereof, shall be operated without prejudice or partiality to any party to this Agreement or any such other user and in such a manner as will result in the most economical and efficient manner of movement of all traffic; provided, however, that CV shall give priority to intercity rail passenger trains of Amtrak to the extent required by Section 402 of the Rail Passenger Service Act. Notwithstanding the foregoing, B & M shall have the right, in

consultation with CV, to establish the schedules of B & M's trains over the Line. Trains performing local work, whether B & M, CV or otherwise, are not entitled to priority over trains that are not performing such work. CV shall establish CV's train schedules with due regard to the trains to be operated by B & M. Each party shall use reasonable efforts to provide five (5) days' notice of changes in its traffic and operating patterns and procedures which may affect the Line. B & M acknowledges that the upgrading work will require a twelve (12) hour work block scheduled for between 7:00 a.m. and 7:00 p.m. CV shall coordinate with B & M and use its best efforts in scheduling the work required for the upgrading of the Former B & M Line and any future maintenance or repair of the Line to minimize any interference with or disruption of B & M's operations over the Line.

5.2 Any and all training that may be required to qualify B & M operating personnel as to CV's operating rules (after the initial training of such personnel, which will be provided by CV) shall be performed by B & M, and the determination as to whether such operating personnel are qualified under CV's operating rules shall be made in the discretion of B & M (giving consideration to any comments or recommendations of CV). CV shall train, and periodically recertify in accordance with CV's operating rules, B & M operating personnel who act as instructors for B & M personnel regarding CV's operating rules.

5.3 CV operating rules shall govern all operations over the Line, and CV shall report to B & M any incidents of violation of such rules by a B & M employee. CV may at its option, for good cause shown, exclude such employee from the Line.

5.4 In the event that any dispute arises as to the interpretation of any operating rules, the interpretations of the Uniform Code of Operating Rules, as amended, shall govern.

6. CLEARING OF DERAILMENTS AND WRECKS

6.1 In the event of any derailment or wreck of a B & M train, B & M shall clear the Line to allow for the passage of other trains within a reasonable time.

6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.)

Page 18

(Cite as: 6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.))

B & M shall perform any rerailling wrecking or wrecking train service as may be required in connection with such derailment or wreck, in accordance with its customary practices. Except as provided in Section 7, the cost liability, and expense of the foregoing, including, without limitation, loss of, damage to, or destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be the responsibility of B & M. In the event that B & M does not begin rerailling operations for passage of trains over the Line within twelve (12) hours of an occurrence or does not complete the process of clearing the Line within a reasonable time, *564 CV may clear the Line for passage of trains, and B & M shall reimburse CV for all reasonable costs CV incurs in performing such service.

7. RELEASE AND INDEMNIFICATION

****22** 7.1 Save as herein otherwise provided, each party hereto shall be responsible for and shall assume all loss, damage or injury (including injury resulting in death) to persons or property, including the cost of removing any trackage, repairing trackage and correcting environmental damage, which may be caused by its engines, cars, trains or other on-track equipment (including damage by fire originating therefrom) whether or not the condition or arrangement of the trackage contributes in any manner or to any extent to such loss, damage or injury, and whether or not a third party may have caused or contributed to such loss, damage or injury, and for all loss or damage to its engines, cars, trains or other on-track equipment while on said trackage from any cause whatsoever, except in the case of collision, in which event the provisions of Section 7.2 shall apply.

7.2 In the event of a collision between CV's and B & M's engines, cars, trains or other on-track equipment while on the Line, the apportionment of liability between the parties hereto for all loss, damage or injury (including injury resulting in death) to any person (including CV's or B & M's employees, agents or representatives) or property shall be governed by the following provision:

7.2.1 If the employees of one party are solely at fault, that party shall be responsible for all such

loss, damage or injury including the cost of removing wreckage, repairing trackage, and correcting environmental damage.

7.2.2 If the employees of both parties hereto are at fault, or if the cause of the accident is so concealed that it cannot be determined whose employees are at fault, each party shall bear and pay for all such loss, damage or injury which its own engines, cars, trains or other on-track equipment and their contents or property in its custody, or its employees or others claiming for them, may have suffered by reason or in consequence of the accident. Responsibility for all other such loss, damage or injury shall be apportioned equally between the parties hereto.

7.2.3 The words "all other such loss, damage or injury" referred to in this Section 7.2 shall be deemed to include but not be limited to the cost of removing wreckage, repairing trackage, correcting environmental damage, and third party claims.

7.2.4 As between the parties hereto, the foregoing provisions of this Section 7.2 shall be applicable whether or not a third party may have caused or contributed to the accident.

7.2.5 The words "trackage" referred to in this Section 7 shall be deemed to include but not be limited to the tracks, structures or facilities pertaining to operation of the Line.

7.3 Without in any way restricting the terms of this Section 7, in the case of a collision or accident between the train of either party to this Agreement and the property of a third person or other entity, including any action done in the process of trying to avoid an accident or a collision, such party shall save harmless and indemnify the other party forthwith for all damages suffered by the other party including damages to equipment and structures or injuries (including death) to the employees or agents of the other party including also the results of those actions done in the process of avoiding a collision or accident, and irrespective of negligence of either party or such third person or other entity, and with a right of subrogation in favor of such party against any such third person or other entity.

****23 *565** 7.4 Each party hereto shall forever

6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.)

Page 19

(Cite as: 6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.))

indemnify and save harmless the other party, from and against all claims, liability or judgments by reason or on account of any injury to or death of any person or of any loss or damage to property, the liability for which is herein assumed by such first mentioned party, and such first mentioned party shall pay and discharge any judgment that may be obtained by reason thereof, and all costs, charges and expenses payable thereunder, including legal counsel fees.

7.5 The parties shall settle, as between themselves, any claim for loss or damage according to the terms of this Agreement, notwithstanding any judgment or decree of any court or other tribunal in a proceeding brought by other parties. In case a suit or proceeding shall be commenced by any person or corporation against either party hereto for or on account of any loss, damage or injury for which the other party hereto is liable under the provisions of this Agreement, the party so sued or proceeded against shall give to the other party reasonable notice, in writing, of the pendency of such suit or proceeding and thereupon the other party shall assume the defense of such suit or proceeding or shall save and hold the party so sued harmless from all loss and costs by reason thereof. Neither party hereto shall be bound by any judgment against the other party unless it shall have reasonable notice that it is so required to defend and has reasonable opportunity to make such defense. When such notice and opportunity has been given, the party notified shall be bound by the judgment as to all matters that could have been litigated in such suit or proceeding.

7.6 In every case of death or injury suffered by an employee of either B & M or CV, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay such compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

8. DEFAULT; PAYMENT DELINQUENCY

8.1 In the event of a material breach by B & M of the terms and conditions of this Agreement which continues for a period of forty-five (45) days after notice thereof from CV, CV shall have the right to terminate this Agreement upon ninety (90) days' notice.

8.2 If B & M becomes delinquent in payment of any amount by more than fourteen (14) days under the terms of Section 3.6, CV shall be entitled to receive advance payment from B & M for each B & M train seeking access to the Line until B & M satisfies the delinquency in full. If B & M fails to tender the advance payment, CV shall be further entitled to exclude and eject B & M from the Line until B & M tenders the advance payment. CV shall be entitled to these remedies for delinquencies even if B & M has disputed the billed amount by invoking arbitration or otherwise. During the pendency of any such exclusion or ejection, CV shall nevertheless accept B & M cars for interchange at any point on the Line.

9. GENERAL PROVISIONS

****24** 9.1 No Waiver. Waiver of any provision of this Agreement, in whole or in part, in any one instance shall not constitute a waiver of any other provision in the same instance, nor ***566** any waiver of the same provision in another instance, but each provision shall continue in full force and effect with respect to any other then existing or subsequent breach.

9.2 Notice. Any notice required or permitted under this Agreement shall be given in writing to the parties at their respective addresses specified above, or at such other address for a party as that party may specify by notice as provided herein, by (i)(A) delivery in hand or by postage prepaid, United States first class mail and (B) registered or certified mail, return receipt requested, or (ii)(A) telefax and (B) registered or certified mail, return receipt requested, or (iii)(A) Federal Express or other form of expedited mail that provides for delivery to the sender of a signed receipt, or (iv) telegram. Notice so sent shall be effective upon

6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.)

Page 20

(Cite as: 6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.))

receipt.

9.3 Integration. Except for the Order and the documents executed in pursuance thereof, this Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written communications, proposals, negotiations, representations, understandings, courses of dealing, agreements, contracts and the like between the parties in such respect. Except for any and all obligations incurred or causes of action accrued thereunder prior to or as of the Conveyance Date, and except as provided in Section 2.4 and 9.3.1 hereof, the Trackage Rights Agreements by and between B & M and CV dated as of April 1, 1985, and January 1, 1930, are hereby terminated. Any provisions of any other agreement(s) between CV and B & M which are not inconsistent with the provisions of this Agreement shall remain in effect until cancelled according to the terms of such other agreement(s).

9.3.1 The provisions of Section 8, Freight Haulage, of the January 1, 1930, Trackage Rights Agreement between CV and B & M, as amended from time to time, shall remain in effect until cancelled by either party upon ninety (90) days' prior written notice to the other.

9.4 Miscellaneous. This Agreement: (i) may be amended, modified, or terminated, and any right under this Agreement may be waived in whole or in part, only by a writing signed by both parties; (ii) contains headings only for convenience, which headings do not form part of and shall not be used in construction of this Agreement; and (iii) is not intended to inure to the benefit of any party not a party to this Agreement.

9.5 Availability of Equitable Relief. The obligations imposed by this Agreement are unique. Breach of any of such obligations would injure the parties to this Agreement; such injury is likely to be difficult to measure; and monetary damages, even if ascertainable, are likely to be inadequate compensation for such injury. Protection of the respective interests provided herein would require equitable relief, including specific performance and injunctive relief, in addition to any other remedy or remedies that the parties may have at law or under

this Agreement.

****25** 9.6 Force Majeure. No party to this Agreement shall be responsible for delays or errors in its performance or other breach under this Agreement occurring by reason of circumstances beyond its control, including acts of civil or military authority, national emergencies, fire, major mechanical breakdown, labor disputes, flood or catastrophe, acts of God, insurrection, war, riots, delays in suppliers, derailments or failure of transportation, communication or power supply.

***567** 9.7 Trains, Locomotives, Cars or Equipment. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such trains, locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of, or under the control of the other party to this Agreement, such trains, locomotives, cars and equipment shall be considered those of the other party, except where the cars or equipment are being transported under the Haulage Agreement referred to in Section 9.3.1 of this Agreement.

9.8 Assignment. This Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, successors and assigns. B & M shall have the right to assign any or all of B & M's rights and obligations under this Agreement to any affiliate of B & M, following consultation with CV. B & M shall have the right to assign any or all of B & M's rights and obligations under this Agreement to any other person with CV's prior consent, which shall not be withheld unreasonably. In the event of an Agreement, the number of carloads attributable to the assignee's operations over the Former B & M Line shall be included in the number of cars attributable to B & M's operations for the purposes of Section 3.3 of this Agreement.

9.9 Governing Law. This Agreement is imposed and entered into in, and shall be governed by the

6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.)

Page 21

(Cite as: 6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.))

laws of, the District of Columbia.

6 I.C.C.2d 539, 1990 WL 287265 (I.C.C.)

END OF DOCUMENT

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

EXHIBIT 2

35695
EB

SERVICE DATE – JANUARY 10, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34612

BOSTON AND MAINE CORPORATION
and
SPRINGFIELD TERMINAL RAILWAY COMPANY
v.
NEW ENGLAND CENTRAL RAILROAD, INC.

Decided: January 9, 2006

We are granting, in part, the petition of Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (jointly, “BM/ST” or “complainants”) for reconsideration of our prior decision dismissing their complaint and petition for a declaratory order arising out of the derailment of a BM/ST train on track owned by the New England Central Railroad, Inc. (NEC).

BACKGROUND

In Amtrak – Conveyance of B&M in Conn River Line in VT & NH, 4 I.C.C.2d 761 (1988) (Amtrak I), the Board’s predecessor agency, the Interstate Commerce Commission (ICC), required B&M to convey its 48.8-mile “Connecticut River Line” to the National Railroad Passenger Corporation (Amtrak), subject to the requirement that Amtrak grant specified trackage rights back to B&M. The ICC also authorized Central Vermont Railway, Inc. (CV) to acquire the conveyed line from Amtrak and to operate it, subject to B&M’s trackage rights. The carriers were directed to negotiate a trackage rights arrangement containing certain core requirements designed to ensure that the tenant carrier would be able to continue to conduct rail freight operations over the line.

During their negotiations, the carriers operated under a temporary trackage rights agreement. When the parties were unable to agree on certain terms for a permanent agreement, the ICC issued a decision in Amtrak – Conveyance of B&M in Conn River Line in VT & NH, 6 I.C.C.2d 539 (1990) (Amtrak II), clarifying its core requirements, resolving the disagreements, and adopting the detailed trackage rights terms and conditions attached as an appendix to that decision, herein called “the trackage rights order” (TO). Many provisions of the temporary agreement were not in dispute and were carried over into the TO without further discussion. In

STB Finance Docket No. 34612

subsequent transactions, NEC acquired CV's assets, including its rights and responsibilities under the TO, and B&M assigned its trackage rights over the line to its subsidiary, ST.

On November 1, 2004, BM/ST filed a complaint and petition for declaratory order arising out of the derailment of an ST train operating on NEC's Connecticut River Line track on or about July 3, 2004. ST's train was operating on NEC's track pursuant to the TO issued in Amtrak II. Complainants alleged that the derailment was caused by NEC's failure to maintain the track as required by the TO and Federal Railroad Administration (FRA) regulations and that, as a consequence, BM/ST suffered damages in excess of \$100,000. BM/ST requested compensatory, incidental, and punitive damages based on breach of contract (the TO) and tortious injury due to gross negligence, recklessness, and willful misconduct by NEC. NEC responded that any claims based on the condition of the track are barred by Section 7.1 of the TO.¹ BM/ST argued that NEC's interpretation of Section 7.1 is contrary to public policy because it would apportion all responsibility for the derailment to BM/ST even if the derailment was caused solely by grossly negligent, reckless, or willful misconduct by NEC. NEC has brought an action in Federal district court to recover damages. New England Central R.R. v. Boston and Maine Corp., Civ. Action No. 04-30235 – MAP (D. Mass., filed Dec. 3, 2004).

By decision served on February 24, 2005 (February 2005 Decision), we dismissed BM/ST's complaint and petition for a declaratory order. We explained that this dispute is not within the Board's primary jurisdiction because the dispute is founded primarily on claims of breach of contract and tortious actions. We reasoned that the dispute involves neither the interpretation of core operational provisions of the TO nor service questions, but is, rather, a dispute over liability for a derailment, an area over which the Board has little expertise and limited jurisdiction. For this reason, we concluded that the court is the appropriate forum to resolve the parties' dispute.

¹ Section 7.1 of the TO provides (6 I.C.C.2d at 564):

7.1 Save as herein otherwise provided, each party hereto shall be responsible for and shall assume all loss, damage or injury (including injury resulting in death) to persons or property, including the cost of removing any trackage, repairing trackage and correcting environmental damage, which may be caused by its engines, cars, trains or other on-track equipment (including damage by fire originating therefrom) whether or not the condition or arrangement of the trackage contributes in any manner or to any extent to such loss, damage or injury, and whether or not a third party may have caused or contributed to such loss, damage or injury, and for all loss or damage to its engines, cars, trains or other on-track equipment while on said trackage from any cause whatsoever, except in the case of collision, in which event the provisions of Section 7.2 shall apply.

STB Finance Docket No. 34612

On March 10, 2005, BM/ST filed a petition for reconsideration of that decision. Complainants do not dispute our finding that this controversy predominantly involves claims of breach of contract and tortious actions arising from a train derailment and that the court is better suited to resolving such fact-bound issues. But complainants argue that the Board should, at a minimum, decide whether Section 7.1 of the TO was intended by the ICC to absolve the track owner (now NEC) from liability claims that are based on gross negligence or willful misconduct. On March 30, 2005, NEC filed a reply in opposition to BM/ST's petition for reconsideration.

DISCUSSION AND CONCLUSIONS

In the February 2005 Decision, we mistakenly assumed that Section 7.1 was not in dispute when the TO was adopted and concluded that the Board's expertise was not required to determine the intent of the parties regarding Section 7.1. We will grant reconsideration to the extent required to provide guidance on the proper interpretation of the provision that the agency imposed.

As noted by complainants, the Board has expressly declined to impose a contested provision that would excuse a carrier from liability resulting from its own gross negligence or willful misconduct, finding such a provision to be contrary to public policy. See National R.R. Passenger Corp. – Applic. – 49 U.S.C. 24308(a), 3 S.T.B. 157, 162 (1998). The concerns expressed by the Board in that case apply with equal force here. The statute requires that the Board implement policies that “promote a safe and efficient rail transportation system” and “operate transportation facilities and equipment without detriment to the public health and safety.” 49 U.S.C. 10101(3), (8). To construe TO Section 7.1 as excusing gross negligence and willful misconduct would not encourage safe operations, and it would contravene well-established precedent that disfavors such indemnification provisions.² Thus, we do not believe that it was the intent of the agency in imposing TO Section 7.1 to allow the landlord carrier to escape liability for maintenance failures that are the result of its own gross negligence or willful misconduct, and we do not construe TO Section 7.1 in that manner.

The remaining issues involved in the complaint are fact-bound, and they predominantly involve claims of breach of contract and tort. For the reasons discussed in the February 2005 Decision, we will continue to defer to the courts the resolution of the remaining issues.

It is ordered:

1. Complainants' petition for reconsideration is granted to the extent discussed above.

² See National R.R. Passenger Corp. v. Consolidated Rail Corp., 698 F. Supp. 951, 971-72 (D.D.C. 1988), rev'd on other grounds, 892 F.2d 1066 (D.C. Cir. 1990); see also Harris v. Howard University, Inc., 28 F. Supp. 2d 1, 14 (D.D.C. 1988).

STB Finance Docket No. 34612

2. This decision is effective on its date of service.

By the Board, Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary

EXHIBIT 3

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**BOSTON AND MAINE CORPORATION
and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

v.

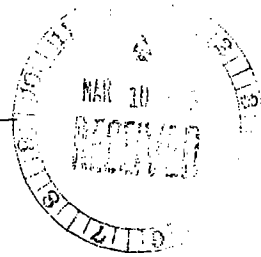
NEW ENGLAND CENTRAL RAILROAD, INC.

Finance Docket No. 34612

**PETITION FOR RECONSIDERATION
IN PART**

The petitioners, Boston and Maine Corporation ("BM") and Springfield Terminal Railway Company ("ST") hereby petition for reconsideration of part of the Board's decision in this proceeding served February 24, 2005 ("Decision"). In particular, BM and ST seek reconsideration of the Board's decision not to interpret—by means of a declaratory order proceeding—Section 7.1 of the Trackage Rights Order ("TO") imposed in 1990 by the Board's predecessor, the Interstate Commerce Commission ("ICC"), in *Amtrak—Conveyance of B&M in Conn River Line in VT & NH*, 6 I.C.C.2d 539 (1990) ("*Amtrak II*").

The BM/ST complaint seeks damages for the July 2004 derailment of its train from the New England Central Railroad's ("NEC") track but it also seeks a declaratory order from the



Board as to the meaning of Section 7.1—a provision that was imposed by the Board's predecessor, the ICC. *See id.* at 564. It may be that, as the Decision states, the courts are better able to evaluate the facts attendant upon the derailment. *See* Decision at 3, 4. It also may be that the courts are better able than the Board to handle tort and breach of contract claims. *See id.* at 1. The key *legal* issue in the dispute, however, is one that the Board, as successor to the ICC, is uniquely qualified to decide: Was Section 7.1 of the TO intended by the ICC to absolve a track owner whose track is in substandard condition due to its own gross negligence or willful misconduct from liability for a derailment resulting from the condition of that track?

In another case involving the same TO, the Court of Appeals for the First Circuit described the Board as being “*uniquely suited*” to determine the meaning of the TO, as well as to make decisions about national rail transportation policy. *Rymes Heating Oils, Inc. v. Springfield Terminal Ry. Co.*, 358 F.3d 82, 91 (1st Cir. 2004) (emphasis added); *accord Hansen v. Norfolk & W. Ry. Co.*, 689 F.2d 707, 712 (7th Cir. 1982) (noting appropriateness of primary jurisdiction referral for interpretation of ICC's own order). In addition to being about the meaning of the TO, the dispute between BM/ST and NEC raises a significant question of transportation policy—namely, whether as a matter of public policy a track owner can absolve itself, in advance, of gross negligence and even willful misconduct in the discharge of its track safety responsibilities.

The Board previously has addressed this issue: “[P]ublic policy generally disfavors requiring one party to be responsible for another's gross negligence or willful and wanton misconduct.” *Nat'l R. Passenger Corp.—Applic.—* 49 U.S.C. 24308(a), 3 S.T.B. 157, 162 (1998). Moreover, the TO is to be interpreted under District of Columbia law, *Amtrak II*, 6 I.C.C.2d at 567 (§ 9.9 of TO), which considers “[c]ontract provisions which appear to indemnify against willful, wanton, reckless, or intentional misconduct by the indemnitee [to be] contrary to

public policy.” *Nat’l R. Passenger Corp. v. Consolidated Rail Corp.*, 698 F. Supp. 951, 970-71 & n. 6 (D.D.C. 1988) (applying D.C. law), *vacated and remanded on other grounds*, 892 F.2d 1066 (1990); *see Wisconsin Ave. Assocs., Inc. v. 2720 Wisconsin Ave. Coop. Ass’n*, 441 A.2d 956, 964-65 (D.C. 1982) (invalidating contract provision as violative of public policy).

Moreover, this is an issue that the parties to this proceeding jointly suggested that the Board address as “a preliminary—and possibly dispositive—issue of law.” Letter from Robert B. Culliford, Corporate Counsel, BM/ST, to Vernon A. Williams, Secretary, STB (Dec. 20, 2004) (copy annexed as Exhibit 1).

The Decision states that the content of Section 7.1 was “not in dispute” in *Amtrak II*, Decision at 1. That is incorrect. The temporary trackage rights agreement that preceded the TO, *see* Decision at 1, provided for shared liability “in proportion to the respective relative fault of each [railroad] for the occurrence which gave rise to the liability.” Interim Trackage Rights Agreement Between Central Vermont Railway, Inc. and Boston and Maine Corp. §§ 7.1-7.2 (Sept. 9, 1988) (“Temporary Agreement”) (copy annexed as Exhibit 2). Thus the Temporary Agreement—a contract as to which the predecessors of BM/ST and NEC agreed—provided for apportionment of responsibility based upon negligence.

In the *Amtrak II* proceeding, NEC’s predecessor, Central Vermont Railway (“CV”), submitted the version of Section 7.1 that the ICC ultimately adopted and that is at issue here (copy of CV proposal annexed as Exhibit 3). CV’s twenty-two page brief in support of its proposed version made no mention of liability beyond the passing remark that “liability indemnification is spelled out” in the proposal. Verified Pet. of Central Vermont Railway, Inc. for Imposition of Terms and Conditions of Trackage Rights on Connecticut River Line, and for Other Relief, STB Finance Docket No. 31259, at 6 (May 18, 1989).

BM, by contrast, proposed a version of Sections 7.1 and 7.2 identical to that in the Temporary Agreement—i.e., providing for shared liability “in proportion to the respective relative fault of each [railroad] for the occurrence which gave rise to the liability” (copy of BM proposal annexed as Exhibit 4). BM’s brief also made no mention of liability issues and the parties’ subsequent responses to one another did not address liability, either.

The ICC decision addressed the issue only briefly:

CV proposes a revised section 7 to address release and indemnification in greater detail than the Interim Agreement. B&M states no objection. Because we find the revisions *will not change the essence of section 7*, we will impose as terms sections 7.1 through 7.6 as proposed by CV.

Amtrak II, 6 I.C.C.2d at 554 (emphasis added).

That BM did not seek judicial review of the decision imposing the TO thus is understandable and is no bar here, for no reasonable person could interpret Section 7.1 as having the limitless scope that NEC now would assign to it. The silence of the parties’ four *Amtrak II* filings on the point underscores this conclusion, as does the ICC’s statement that the CV version “will not change the essence of section 7” of the Temporary Agreement—a provision that apportioned liability based upon relative fault. Thus there can be no reasonable claim that BM agreed or acceded to NEC’s strained current interpretation of Section 7.1.

In addition to the fact that the Board is far more qualified than a court to explain the meaning of a provision ordered by the ICC, the legal issue raised by the declaratory order portion of the proceeding is one that should be uniform for all STB-imposed trackage rights. *See, e.g., Nat’l R. Passenger Corp.—Applic.—49 U.S.C. 24308(a)*, 3 S.T.B. 157, 162 (1998) (rejecting a provision similar to § 7.1 because it would violate public policy). This is a classic instance of the utility of the primary jurisdiction doctrine. *See Pejepscot Indus. Park, Inc. v. Maine Central R. Co.*, 215 F.3d 195, 205-06 (1st Cir. 2000) (“promote uniformity”); *Hansen*, 689 F.2d at 710-11

(same). The Board should not refrain from deciding this legal issue even if it then leaves to the courts the task of finding the facts to which the Board's legal conclusions are to be applied.

WHEREFORE, BM and ST respectfully request that the Board reconsider its decision served February 24, 2005, open a declaratory order proceeding on the limited issue of whether Section 7.1 of the TO absolves NEC of liability if NEC's gross negligence or willful misconduct was a cause of the July 3, 2004 derailment, and set a briefing schedule.¹ BM and ST note that the parties previously had suggested that opening statements be due within thirty days after the Board's order opening a proceeding and that replies be submitted within twenty days after the service of opening statements. Letter from Robert B. Culliford, Corporate Counsel, BM/ST, to Vernon A. Williams, Secretary, STB (Dec. 20, 2004) (copy annexed as Exhibit 1).

Respectfully submitted,



Eric L. Hirschhorn
Winston & Strawn LLP
1400 L Street, NW
Washington DC 20005
Tel. 202-371-5706

Robert B. Culliford
Guilford Rail System
Iron Horse Park
North Billerica MA 01862
Tel. 978-663-1029

¹ Should the Board deny reconsideration here, BM and ST assume that it would not refuse to interpret § 7.1 were it asked to do so by the U.S. District Court that currently is hearing NEC's action against BM/ST. *See Engelhard Corp.—Petition for Declaratory Order—Springfield Terminal Railway Corp. and Consolidated Rail Corp.* STB Docket No. 42075, at 2 (served Apr. 1, 2003) (noting that "[p]etitions for issuance of a declaratory order premised on referral from a federal court are routinely accepted. *See Delegation of Authority—Declaratory Order Proceedings*, 5 I.C.C.2d 675, 676 (1989)").

*Attorneys for Petitioners Boston and Maine
Corp. and Springfield Terminal Railway
Co.*

Dated: March 10, 2005

EXHIBIT 4

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 -----
4 NEW ENGLAND CENTRAL
5 RAILROAD, INC.

COPY

6 Plaintiff,

7 VS.

Civil Action No.
04-30235-MAP

8 SPRINGFIELD TERMINAL RAILWAY
9 COMPANY, ET AL.

10 Defendants.
11 -----

12 D E P O S I T I O N

13 -of-

14 RICHARD R. BOUCHER

15 Taken on Wednesday, January 10, 2007,
16 at the offices of
17 New England Central Railroad, Inc.
18 St. Albans, Vermont.

19 APPEARANCES:

20 ON BEHALF OF THE PLAINTIFF:

21 RICHARD A. DAVIDSON, JR., ESQ.

22 Flynn & Associates, P.C.

23 400 Crown Colony Drive, Suite 200
24 Quincy, MA 02169

25 ON BEHALF OF THE DEFENDANT:

ROBERT B. CULLIFORD, ESQ.

Senior Vice President and General Counsel
Pan Am Systems

14 Aviation Avenue

Portsmouth, NH 03801

NORMA J. MILLER, RPR

COURT REPORTERS ASSOCIATES

117 BANK STREET

BURLINGTON, VT 05401

(802) 862-4593

Page 6

1 2004, FRA rail test car inspection.
2 A. Yes.
3 Q. Did that inspection include Milepost 5 to
4 Milepost 11?
5 A. Yes.
6 Q. Were you on that test car?
7 A. Yes.
8 Q. What was your role on the test car that day?
9 A. I was keeping track of the restrictions and
10 relaying them to the train dispatch.
11 Q. Okay. If I could refer you to Lawyer Exhibit
12 2. Have you ever seen this document, sir? Take a
13 minute to look at it.
14 A. This?
15 Q. Yeah.
16 A. I need my glasses for that. Yes.
17 Q. Could you identify it?
18 A. Identify it?
19 Q. What is it?
20 A. This is the exception list from the FRA car,
21 I'm assuming, right?
22 Q. June 8th, 2004?
23 A. That's what it states here, yeah.
24 Q. Okay. Are you aware that this test car
25 inspection uncovered a defect at Milepost 10.16?

Page 7

1 A. Yes, I am.
2 Q. Do you know what that defect was?
3 A. Yeah, it was a warp, I believe.
4 Q. Would you like to -- if you'd like to look at
5 page -- if you go by the numbers up on the right, it
6 would be 803 where the next mark is?
7 A. Yup.
8 Q. Does that refresh your recollection?
9 A. Mm-hm.
10 Q. And so it was a warp condition?
11 A. Yes.
12 Q. Could you describe your understanding of what
13 a warp condition is?
14 A. What a warp condition is is a combination of
15 cross level from one side to the other.
16 Q. Meaning what? That exists every day, doesn't
17 it?
18 A. Yeah, to some extent.
19 Q. Could you explain what you mean by cross level
20 from one side to the other, just for a lay person
21 such as me?
22 A. Well, if, for instance, you have a join on one
23 side that's -- say it's down an inch, and then
24 within 62 feet, everything's measured 62-foot cores,
25 so if you had another joint within that 62 feet, per

Page 8

1 se, on the opposite side, you'd have a borderline
2 Class 3.
3 Q. What would be the condition of those joints
4 that would give rise to a warp?
5 A. They'd be considered a low joint.
6 Q. One low/one high, or both low?
7 A. No, both low.
8 Q. Okay.
9 A. Typically.
10 Q. Pardon?
11 A. Typically.
12 Q. Okay, in this situation that the condition
13 that existed?
14 A. That was, yes.
15 Q. Okay. Do you know what the proper remedial
16 action would be, pursuant to the FRA track safety
17 standards, once a warp condition is found?
18 A. What the remedial action would be?
19 Q. Yes.
20 A. Well, in that case, it would have been to tamp
21 it.
22 Q. Okay. Any other options?
23 A. None other than be restricted to -- you drop
24 it to the class that it's -- that it meets the
25 requirements that it meets.

Page 9

1 Q. Do you know what was done in this instance?
2 A. It was dropped to a Class 2.
3 Q. Do you know why it wasn't tamped?
4 A. Why it wasn't tamped? Yeah.
5 Q. Why?
6 A. We hadn't got there yet with our surfacing
7 equipment.
8 Q. Why not?
9 A. I had a -- if my memory serves me, I had -- my
10 operator went on vacation, and I didn't have an
11 operator for the machine.
12 Q. Okay.
13 A. It was in the scope of work to be done. We
14 just hadn't got that far with the equipment.
15 Q. When did you expect to get that work done?
16 A. It would have been done, I would guess, within
17 the next week or two.
18 Q. Okay.
19 A. Depending on what events took place.
20 Q. Can you describe to us your understanding of
21 how a warp condition could affect a train going over
22 this section of track?
23 A. How it could affect a train going over it?
24 Q. Sure.
25 A. How a warp would affect it?

Page 10

1 Q. Yeah.
2 A. Well, it can cause rock in the train, sure.
3 Q. Can you describe what you mean by rock?
4 A. Well, it's a -- we call it harmonic rock, so
5 if you got a low joint and then another low joint,
6 and if they're within a prescribed distance, it can
7 cause rock motion in the train -- roll, rock,
8 whatever you want to call it.
9 Q. Could rock result in a condition known as
10 wheel lift? Are you familiar with that term?
11 A. Yeah.
12 Q. Could that condition result as a --
13 A. Could it result?
14 Q. Yeah.
15 A. If it was extreme enough, yeah.
16 Q. What would make it extreme? Do you know, in
17 generalities?
18 A. In generality, it would have been -- unless if
19 your joints were real low, excessively low.
20 Q. Do you know if that condition existed at
21 Milepost 10.16?
22 A. It did not. Definitely did not.
23 Q. Why not?
24 A. Because I took the track measurements. I
25 GPSed them that day. We get this GPS reading.

Page 11

1 Q. This is on June 8th, 2004?
2 A. Yes, I GPSed it and identified the defect.
3 Q. Subsequent to June 8th, 2004, up to July 3rd,
4 2004, did you ever take another measurement at that
5 location?
6 A. Did I personally?
7 Q. Yes.
8 A. No.
9 Q. Do you know if anyone from New England Central
10 ever took another measurement?
11 A. I'm not sure about that.
12 Q. Would it have been a common practice in the
13 Track Inspection Department to take another
14 measurement?
15 A. To take another one? Not unless it hasn't
16 been restricted or the slow order was --
17 Q. Were you aware of this condition before June
18 8th, 2004?
19 A. Definitely not. It would have been restricted
20 before.
21 Q. Would you call this condition -- is it a
22 difficult condition to notice without testing?
23 A. Some are. This particular one, static
24 measurements, you didn't have it. You had to add in
25 load. So you -- when you're taking track

Page 12

1 measurements, you look for indications that the
2 track may be pumping, or any movement in the ties.
3 In this particular case, as I remember, it was
4 within half an inch, but if you added in under load,
5 the combination of the two joints within 62 feet,
6 could you come up with it.
7 Q. Did you go out there again to Milepost 10.16,
8 after June 8th, 2004, between between June 8th, 2004
9 and --
10 A. After the car run.
11 Q. But I just wanted to be clear about the
12 timeline, between June 8th, and July 3rd, 2004, did
13 you go out there again?
14 A. I may have gone through that area, but not
15 sure.
16 Q. In what capacity would you have gone through
17 the area?
18 A. Maybe inspecting or high-railing for some
19 reason. I high-rail frequently. I do track
20 inspections.
21 Q. Okay, did you notice that the condition was
22 worsening?
23 A. No.
24 Q. Okay, if we could talk about the derailment of
25 July 3rd, 2004, you're familiar with that?

Page 13

1 A. Mm-hm.
2 Q. And the response to that derailment, both the
3 investigation and the repair of the rail line, if we
4 could spend a few minutes on that.
5 A. Okay.
6 Q. Did you investigate this derailment from a
7 standpoint of determining the cause?
8 A. No.
9 Q. Do you know who did?
10 A. RT, the track inspector, and the roadmaster.
11 Q. The track inspector being?
12 A. R.T.
13 MR. DAVIDSON: R.T. Boucher the
14 gentleman who was here before.
15 MR. CULLIFORD: Your son.
16 A. Yeah, he was the inspector. I got down there
17 later in the day.
18 Q. What was your role when you did get down
19 there?
20 A. Doing track repairs so we could run trains.
21 Q. Okay.
22 A. I walked a good portion of it --
23 Q. Okay.
24 A. -- to determine what needed to be repaired so
25 we could get trains over it.

EXHIBIT 5

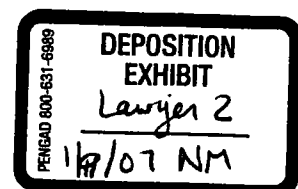
NECR-0456
NH State Line to VT State Line
NECRException Report
Quick Exception List
MP 131 to MP 121

000797

Page 1
06/08/04
NECR-0456

MP	Feet	Decimal	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
131	009309	131.00	Down MP	131.00						
130	005281	130.00	Down MP	130.00					44.798325	-073.095434
129	005306	129.00	Down MP	129.00					44.785284	-073.103647
128	005314	128.00	Down MP	128.00					44.770838	-073.105448
127	005323	127.00	Down MP	127.00					44.757512	-073.098975
127	000695	126.87	Warp 62	2.45	48	S	1 3	5	44.745592	-073.087513
									44.744283	-073.085547
126	005238	126.00	Down MP	126.00						
125	005274	125.00	Down MP	125.00					44.732680	-073.081738
125	001238	124.77	Crosslevel	1.88	2	T	2 3	5	44.718570	-073.085982
125	002184	124.59	Crosslevel	2.27	18	T	1 3	5	44.715429	-073.087783
124	005292	124.00	Down MP	124.00					44.713038	-073.089167
123	005296	123.00	Down MP	123.00					44.704702	-073.090912
									44.691100	-073.085064
123	000824	122.84	Warp 62	2.20	59	S	2 3	5	44.688861	-073.084916
122	005285	122.00	Down MP	122.00					44.676924	-073.083236
121	005283	121.00	Down MP	121.00					44.663385	-073.090068
121	000073	120.99	Crosslevel	3.31	116	T	0 3	5	44.663219	-073.090231
121	000099	120.98	Crosslevel	2.55	16	T	1 3	5	44.663170	-073.090252
121	000137	120.97	Crosslevel	2.56	15	T	1 3	5	44.663080	-073.090332
121	000192	120.96	Warp 62	2.49	61	T	1 3	5	44.662953	-073.090445
121	000759	120.86	Crosslevel	1.97	3	T	2 3	5	44.661662	-073.091666
121	001990	120.62	Warp 62	2.47	61	T	1 3	5	44.658855	-073.094298
121	002047	120.61	Warp 62	2.36	57	T	1 3	5	44.658732	-073.094426
120	005284	120.00	Down MP	120.00					44.651403	-073.101417
120	002780	119.47	Warp 62	2.90	62	S	1 3	5	44.644649	-073.105675
118	010586	118.00	Down MP	118.00					44.623651	-073.110168
117	005284	117.00	Down MP	117.00					44.609313	-073.109214
117	005588	115.95	RQ CB Ver P-P	0.45					44.595460	-073.117466
116	005299	116.00	Down MP	116.00					44.596220	-073.117166
116	003145	115.40	Warp 62	2.24	17	C	2 3	5	44.587760	-073.118760
115	005285	115.00	Down MP	115.00					44.581963	-073.119944
115	000361	114.93	Class Chg	4.00					44.581019	-073.120149
115	000503	114.90	Warp 62	1.87	59	S	3 4	5	44.580637	-073.120245
115	001149	114.78	Class Chg	3.00					44.578914	-073.120994
114	005286	114.00	Down MP	114.00					44.572367	-073.133334
114	001813	113.66	Crosslevel	2.05	2	T	1 3	5	44.567591	-073.133367
114	002183	113.59	Warp 62	2.44	59	S	1 3	5	44.566635	-073.132956
114	002262	113.57	Warp 62	2.33	59	S	1 3	5	44.566429	-073.132865
114	002301	113.56	Warp 62	2.44	60	S	1 3	5	44.566327	-073.132817

NOTES:

Runoff exceptions are for information only
RQ (Ride Quality) exceptions are for information only

000798

NECR-0456
NH State Line to VT State Line
NECRException Report
Quick Exception List
MP 131 to MP 121Page 2
06/08/04
NECR-0456

MP	Feet	Decimal	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
114	002592	113.51	Warp 62	2.12	57	S	2 3	5	44.565601	-073.132386
114	002508	113.53	Lmt Speed 3	51.00					44.564834	-073.131797
114	003139	113.41	Warp 62	2.35	57	T	1 3	5	44.564279	-073.131349
114	003388	113.36	Warp 62	2.17	56	S	2 3	5	44.563689	-073.130848
113	005282	113.00	Down MP	113.00					44.558673	-073.129587
112	005303	112.00	Down MP	112.00					44.544231	-073.131748
112	000558	111.89	Warp 62	2.10	59	S	2 3	5	44.542710	-073.131981
111	005283	111.00	Down MP	111.00					44.530314	-073.127340
110	005280	110.00	Down MP	110.00					44.516575	-073.121040
109	005294	109.00	Down MP	109.00					44.502799	-073.114729
109	003370	108.36	Class Chg	2.00					44.494029	-073.110723
108	005284	108.00	Down MP	108.00					44.489064	-073.110681
108	001401	107.74	Class Chg	3.00					44.485800	-073.108615
108	001976	107.63	Warp 62	2.28	59	T	1 3	5	44.484778	-073.106952
107	005290	107.00	Down MP	107.00					44.481178	-073.095943
107	000396	106.93	Warp 62	2.55	57	S	1 3	5	44.481468	-073.094493
107	000436	106.92	Warp 62	2.15	58	S	2 3	5	44.481503	-073.094347
105	010582	105.00	Down MP	105.00					44.472962	-073.058927
105	000191	104.96	Warp 62	2.28	59	T	1 3	5	44.472686	-073.058308
104	005272	104.00	Down MP	104.00					44.464833	-073.042237
103	005307	103.00	Down MP	103.00					44.454961	-073.028144
102	005281	102.00	Down MP	102.00					44.440825	-073.023624
102	002387	101.55	Gage Wide	57.88	3	C	1 3	5	44.434463	-073.021488
101	005292	101.00	Down MP	101.00					44.427676	-073.015741
100	005335	100.00	Down MP	100.00					44.415439	-073.004623
99	005248	99.00	Down MP	99.00					44.403512	-072.993448
98	005293	98.00	Down MP	98.00					44.397251	-072.975306
97	005295	97.00	Down MP	97.00					44.391418	-072.956812
96	005286	96.00	Down MP	96.00					44.384548	-072.939209
95	005284	95.00	Down MP	95.00					44.380877	-072.919874
94	005299	94.00	Down MP	94.00					44.376737	-072.900812
93	005289	93.00	Down MP	93.00					44.372460	-072.881534
91	010574	91.00	Down MP	91.00					44.362907	-072.843443
90	005299	90.00	Down MP	90.00					44.357234	-072.824877
90	002469	89.65	Gage Wide	58.09	6	C	0 3	5	44.355204	-072.816081
90	003078	89.57	Warp 62	2.20	62	S	2 3	5	44.355673	-072.813866
89	007098	89.00	Down MP	89.00					44.355159	-072.805155
88	005295	88.00	Down MP	88.00					44.351277	-072.785699

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

000799

NECR-0456
NH State Line to VT State Line
NECRException Report
Quick Exception List
MP 131 to MP 121Page 3
06/08/04
NECR-0456

MP	Feet	Decimal	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
88	003229	87.39	RQ CB Ver P-P	0.45						
87	005282	87.00	Down MP	87.00					44.348595	-072.773980
									44.345412	-072.767540
86	005051	86.00	Down MP	86.00					44.336411	-072.753043
85	005647	85.00	Down MP	85.00					44.325458	-072.738139
84	005167	84.00	Down MP	84.00					44.316570	-072.722897
84	002756	83.48	Lmt Speed 3	58.00					44.314443	-072.711996
83	005293	83.00	Down MP	83.00					44.314760	-072.703786
82	005296	82.00	Down MP	82.00					44.304698	-072.690913
80	010572	80.00	Down MP	80.00					44.285826	-072.663117
79	005288	79.00	Down MP	79.00					44.275925	-072.649906
78	005286	78.00	Down MP	78.00					44.269724	-072.631726
78	002357	77.56	Warp 62	2.16	21	T	2 3	5	44.266297	-072.624118
77	005299	77.00	Down MP	77.00					44.262009	-072.614616
77	001940	76.63	Warp 62	2.19	56	S	2 3	5	44.258738	-072.608894
77	014907	74.18	Gage Wide	57.99	4	S	1 3	5	44.228482	-072.607660
74	015854	74.00	Down MP	74.00					44.228263	-072.611249
73	005290	73.00	Down MP	73.00					44.217758	-072.624425
72	005306	72.00	Down MP	72.00					44.204720	-072.633330
71	005282	71.00	Down MP	71.00					44.191173	-072.640084
70	005301	70.00	Down MP	70.00					44.177507	-072.643724
69	005273	69.00	Down MP	69.00					44.166953	-072.656368
68	005293	68.00	Down MP	68.00					44.152704	-072.656774
68	000818	67.85	Warp 62	2.13	62	S	2 3	5	44.150491	-072.656990
68	001748	67.67	RQ CB Ver P-P	0.43					44.148074	-072.658180
66	010567	66.00	Down MP	66.00					44.125570	-072.667415
65	005236	65.00	Down MP	65.00					44.112915	-072.676098
64	005333	64.00	Down MP	64.00					44.111478	-072.695004
64	002329	63.56	Gage Wide	57.94	6	C	1 3	5	44.112831	-072.703577
64	004871	63.08	Gage Wide	58.01	6	C	0 3	5	44.116728	-072.711554
63	005288	63.00	Down MP	63.00					44.117158	-072.713007
999	002047	999.00	Down MP	999.00					44.117199	-072.713085
999	003145	998.41	Gage Wide	57.96	10	C	1 3	5	44.116278	-072.724756
999	003305	998.38	Gage Wide	57.97	10	C	1 3	5	44.116071	-072.725304
998	005295	998.00	Down MP	998.00					44.111450	-072.728633
61	005270	61.00	Down MP	61.00					44.097410	-072.732532
61	004619	60.13	RQ CB Ver P-P	0.46					44.085166	-072.736814
60	005302	60.00	Down MP	60.00					44.083505	-072.737978
60	002921	59.44	Warp 62	2.16	62	S	2 3	5	44.076171	-072.742385

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

000803

NECR-0456
NH State Line to VT State Line
NECR

Exception Report
Quick Exception List
MP 131 to MP 121

Page 7
06/08/04
NECR-0456

MP	Feet	Decimal	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
14	003195	13.40	Warp 62	2.53	14	T	1 3	5	43.631789	-072.330938
14	003216	13.39	Warp 62	2.50	21	T	1 3	5	43.631733	-072.330955
14	003899	13.26	Warp 62	2.29	20	T	1 3	5	43.629898	-072.331450
13	005288	13.00	Down MP	13.00					43.626187	-072.332610
13	001290	12.76	Crosslevel	1.94	2	T	2 3	5	43.622734	-072.333647
13	001348	12.75	Warp 62	2.20	59	T	2 3	5	43.622577	-072.333684
12	005299	12.00	Down MP	12.00					43.612155	-072.334521
12	000610	11.88	Gage Wide	57.88	4	S	1 3	5	43.610577	-072.333751
12	001496	11.72	Warp 62	2.23	60	S	2 3	5	43.609052	-072.331236
11	005270	11.00	Down MP	11.00					43.600404	-072.331130
11	004448	10.16	Warp 62	2.21	62	S	2 3	5	43.593081	-072.344186
10	005295	10.00	Down MP	10.00					43.592571	-072.347304
10	000878	09.84	RQ CB Ver P-P	0.44					43.591586	-072.350306
9	005336	09.00	Down MP	9.00					43.586660	-072.365683
8	005236	08.00	Down MP	8.00					43.578776	-072.381403
8	000496	07.91	Gage Wide	58.01	11	C	0 3	5	43.577664	-072.382453
8	004697	07.11	RQ CB Ver P-P	0.51					43.566425	-072.384375
7	005292	07.00	Down MP	7.00					43.564791	-072.384383
6	005302	06.00	Down MP	6.00					43.550259	-072.384217
5	005257	05.00	Down MP	5.00					43.536267	-072.388402
4	005308	04.00	Down MP	4.00					43.523335	-072.397012
3	005298	03.00	Down MP	3.00					43.509675	-072.399006
2	005289	02.00	Down MP	2.00					43.497811	-072.388749
1	005308	01.00	Down MP	1.00					43.483966	-072.384225
1	001474	00.72	Warp 62	2.68	39	S	1 3	5	43.479936	-072.384727
1	003443	00.35	Crosslevel	2.64	102	T	1 3	5	43.475512	-072.386703
1	004384	00.17	Gage Wide	57.88	3	S	1 3	5	43.473574	-072.388652
1	005140	00.03	Warp 62	3.26	62	S	0 3	5	43.470865	-072.389253
1	005322	00.01	State Line	NH					43.469802	-072.388827
169	005541	169.00	Down MP	169.00					43.468446	-072.388259
169	000283	168.86	Warp 62	2.43	62	S	1 3	5	43.466661	-072.388046
169	000303	168.85	Warp 62	2.37	60	S	1 3	5	43.466606	-072.388049
169	001366	168.31	Lmt Speed 3	47.00					43.455785	-072.387753
168	001974	168.00	Down MP	168.00					43.454719	-072.387455
168	000163	167.94	Warp 62	2.21	62	S	2 3	5	43.453352	-072.387024
168	000317	167.89	Lmt Speed 3	30.00					43.448625	-072.387966
167	002830	167.00	Down MP	167.00					43.440687	-072.390679
166	005289	166.00	Down MP	166.00					43.426254	-072.392015

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

NECR-0456
NH State Line to VT State Line
NECR

Exception Report
Quick Exception List
MP 131 to MP 121

Page 8
06/08/04
NECR-0456

MP	Feet	Decimal	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
166	003151	165.41	RQ CB Ver P-P	0.51					43.417627	-072.392414
166	004071	165.23	RQ CB Ver P-P	0.47					43.415098	-072.392522
165	005306	165.00	Down MP	165.00					43.411730	-072.392699
164	005288	164.00	Down MP	164.00					43.397729	-072.388033
163	005293	163.00	Down MP	163.00					43.384170	-072.381890
162	005281	162.00	Down MP	162.00					43.370404	-072.377794
162	005091	161.03	Crosslevel	2.00	3	T	1 3	5	43.356837	-072.381200
162	005147	161.02	Warp 62	2.12	59	T	2 3	5	43.356693	-072.381264
161	005236	161.00	Down MP	161.00					43.356451	-072.381390
161	001713	160.68	RQ CB Ver P-P	0.41					43.351995	-072.383376
160	005281	160.00	Down MP	160.00					43.342353	-072.382321
160	000645	159.88	Warp 62	2.30	58	T	1 3	5	43.340696	-072.381652
159	005280	159.00	Down MP	159.00					43.328398	-072.377559
158	005304	158.00	Down MP	158.00					43.313998	-072.380037
158	000437	157.92	RQ CB Ver P-P	0.50					43.312802	-072.380111
158	002427	157.55	Lmt Speed 3	54.00					43.305402	-072.383528
157	005353	157.00	Down MP	157.00					43.301054	-072.388231
156	005113	156.00	Down MP	156.00					43.290401	-072.400116
157	005094	156.04	Warp 62	3.00	62	S	1 3	5	43.290427	-072.400050
157	005112	156.04	Warp 62	2.12	18	S	2 3	5	43.290404	-072.400110
156	001560	155.71	Crosslevel	1.88	1	T	2 3	5	43.287259	-072.403868
155	005306	155.00	Down MP	155.00					43.277474	-072.407194
155	005174	154.02	Warp 62	2.23	58	T	2 3	5	43.264954	-072.416346
154	005287	154.00	Down MP	154.00					43.264693	-072.416530
153	005299	153.00	Down MP	153.00					43.251629	-072.424851
152	005249	152.00	Down MP	152.00					43.237249	-072.426329
152	001169	151.78	Gage Wide	58.04	10	C	0 3	5	43.234077	-072.426431
152	002183	151.59	Warp 62	2.25	58	C	1 3	5	43.231410	-072.425501
152	002243	151.58	Warp 62	2.23	60	C	2 3	5	43.231259	-072.425419
152	003672	151.31	L Align 62	-1.88	3	S	2 3	5	43.227656	-072.423319
152	003674	151.31	R Align 62	-2.01	9	S	2 3	5	43.227651	-072.423316
152	004801	151.10	Excess Elev	7.26	17	S	2 3	5	43.224623	-072.422716
152	004840	151.09	Excess Elev	7.60	22	S	2 3	5	43.224518	-072.422743
152	004891	151.08	Warp 62	2.42	61	S	1 3	5	43.224381	-072.422781
152	004114	151.23	Lmt Speed 3	53.00					43.223239	-072.423277
152	008600	150.38	Warp 62	2.12	62	S	2 3	5	43.214878	-072.427652
150	010634	150.00	Down MP	150.00					43.209610	-072.430131
149	005286	149.00	Down MP	149.00					43.196577	-072.437845

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

000805

NECR-0456
NH State Line to VT State Line
NECR

Exception Report
Quick Exception List
MP 131 to MP 121

Page 9
06/08/04
NECR-0456

MP	Feet	Decimal	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
148	005286	148.00	Down MP	148.00					43.182174	-072.439500
148	001592	147.70	RQ CB Ver P-P	0.40					43.178033	-072.441308
147	005237	147.00	Down MP	147.00					43.168244	-072.443720
146	005332	146.00	Down MP	146.00					43.154033	-072.447960
146	002665	145.50	Warp 62	2.15	62	S	2 3	5	43.146800	-072.449239
146	002758	145.48	Warp 62	2.92	62	S	1 3	5	43.146550	-072.449262
146	004919	145.07	Class Chg	1.00					43.140712	-072.448140
145	005310	145.00	Down MP	145.00					43.139638	-072.447713
145	000700	144.88	State Line	VT					43.137925	-072.446534
145	003327	144.45	Class Chg	2.00					43.134983	-072.443900
145	004243	144.30	Warp 62	2.54	62	S	1 2	5	43.132556	-072.443490
145	005878	144.03	Class Chg	3.00					43.128277	-072.442885
145	006027	144.00	Warp 62	2.17	62	S	2 3	5	43.127979	-072.442532
145	006047	144.00	Warp 62	2.36	62	S	1 3	5	43.127946	-072.442481
145	007657	143.73	Warp 62	2.21	22	T	2 3	5	43.124722	-072.438357
143	012070	143.00	Down MP	143.00					43.114326	-072.435642
142	005287	142.00	Down MP	142.00					43.101301	-072.443678
142	000844	141.84	Crosslevel	-2.03	4	T	1 3	5	43.099103	-072.442813
142	004293	141.19	Warp 62	2.43	31	S	1 3	5	43.090154	-072.438677
141	005274	141.00	Down MP	141.00					43.087490	-072.438339
140	005305	140.00	Down MP	140.00					43.074554	-072.446878
139	005364	139.00	Down MP	139.00					43.062639	-072.458205
138	005228	138.00	Down MP	138.00					43.051474	-072.468299
137	005384	137.00	Down MP	137.00					43.037446	-072.463604
136	005152	136.00	Down MP	136.00					43.023644	-072.461607
136	001168	135.77	Lmt Speed 3	48.00					43.020037	-072.459424
135	005171	135.00	Down MP	135.00					43.010700	-072.455803
135	003756	134.29	Gage Wide	57.86	9	S	1 3	5	43.000824	-072.459694
135	003882	134.26	Lmt Speed 3	52.00					42.998429	-072.461858
134	005270	134.00	Down MP	134.00					42.997426	-072.462902
134	003712	133.30	RQ CB Ver P-P	0.51					42.987881	-072.467543
134	004396	133.17	Crosslevel	-1.86	1	T	2 3	5	42.986042	-072.467989
134	004456	133.16	Warp 62	2.38	61	T	1 3	5	42.985879	-072.468021
133	005277	133.00	Down MP	133.00					42.983675	-072.468671
132	005294	132.00	Down MP	132.00					42.974098	-072.482863
131	005317	131.00	Down MP	131.00					42.967541	-072.500240
131	004334	130.17	Crosslevel	-1.89	1	T	2 3	5	42.964199	-072.515783
130	005249	130.00	Down MP	130.00					42.963385	-072.519003

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

NECR-0456
NH State Line to VT State Line
NECR

Exception Report
Quick Exception List
MP 131 to MP 121

000806

Page 10
06/08/04
NECR-0456

MP	Feet	Decimal	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
129	005275	129.00	Down MP	129.00					42.953710	-072.533181
128	005302	128.00	Down MP	128.00					42.941501	-072.527199
127	005280	127.00	Down MP	127.00					42.927152	-072.526982
126	005274	126.00	Down MP	126.00					42.913683	-072.527585
125	005287	125.00	Down MP	125.00					42.900606	-072.534784
124	005283	124.00	Down MP	124.00					42.889388	-072.545095
124	002825	123.47	Lmt Speed 3	54.00					42.882031	-072.555120
123	005294	123.00	Down MP	123.00					42.878385	-072.558227
122	005289	122.00	Down MP	122.00					42.864064	-072.554783
122	002311	121.58	Gage Wide	58.00	10	C	0 3	5	42.857869	-072.555487
122	002411	121.56	Class Chg	2.00					42.857628	-072.555628
122	003823	121.30	Gage Wide	57.89	4	S	1 2	5	42.853976	-072.557431
122	003843	121.30	Gage Wide	57.87	4	S	1 2	5	42.853923	-072.557441
122	003907	121.29	Gage Wide	57.99	7	S	1 2	5	42.853751	-072.557484
122	003959	121.28	Gage Wide	58.13	37	C	0 2	5	42.853592	-072.557561
122	004029	121.27	Gage Wide	57.96	7	C	1 2	5	42.853423	-072.557562
122	004213	121.23	Gage Wide	57.95	8	C	1 2	5	42.852916	-072.557449
122	004248	121.23	Gage Wide	58.00	15	C	0 2	5	42.852818	-072.557428
122	004274	121.22	Gage Wide	57.99	5	C	1 2	5	42.852751	-072.557406
122	004393	121.20	Gage Wide	58.04	7	S	0 2	5	42.852420	-072.557313
122	005360	121.03	Class Chg	3.00					42.850063	-072.555803
121	005500	121.00	Down MP	121.00					42.849714	-072.555586

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

EXHIBIT 6

Train Derailment Cause Finding



An International Government-Industry
Research Program on Track Train Dynamics

April, 1982 Revised April, 1983

Sponsored by the AAR.

Track Geometry

The Investigation Committee may find indications that deviations in track geometry either caused or contributed to the derailment. In that case, details on the theoretical alignment, grade and vertical curve characteristics, and field measurements of specific parameters which portray the actual track geometry conditions in the immediate area of the POD are required. For convenience, this sub-section is divided into five items—Parameters, Defects, Track Measurements, Track Notes and Derailment Records.

1. Parameters

Deviations exceeding the railroad standards should be identified for each of the following parameters:

- Gage
- Alignment
- Cross level, particularly excessive cross level, excessive rate of change in cross level on spirals, high twist or warp and inadequate superelevation on curves
- Surface

One or more parameters should be considered as a possible or contributing cause if the measured value exceeds the railroad's standards. Suggested limiting values are given in Appendix F.

2. Defects

The more common track geometry defects that cause or contribute to a derailment are:

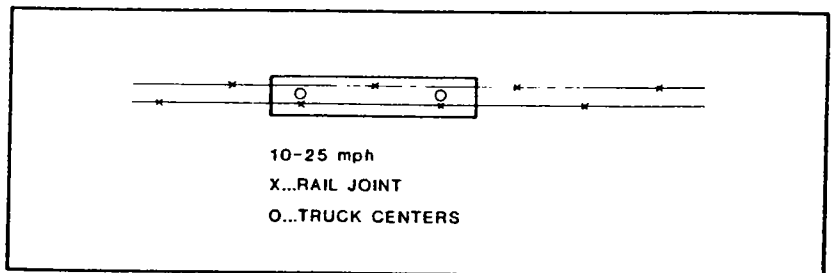
- Gage—If wide gage is suspected, investigate spike condition and plate action on tie surface for evidence of gage widening under load and returning to normal when in an unloaded state. In addition, look for marks on rail head indicating edge of wheel rim or flange riding on or crossing over top of rail.
- Cross Level—Wheel lift or wheel climb type derailments can be caused by an irregularity in the elevation of two rails if the irregularity occurs in too short of a distance. Low joints which are staggered along the length of track and an excessive rate of change in the varying amount of elevation along the length of a spiral are two problem areas.

Incidents involving the suspected tracking characteristics of the equipment, such as "rock off," vertical bounce, wheel climb and "warp off" type derailments, are associated with excessive change in cross level. "Warp off" refers to a situation where the cross level change between trucks of an individual piece of equipment is too great to be absorbed by the suspension and flexibility of the equipment, thus causing a wheel to climb the rail.

Rock and roll type derailments occur when the distance between truck centers is about the same as the length of the rail between joints. Figure V-5 illustrates this relationship.

V-8

Figure V-5
Relationship of Truck Centers to Rail Joints



If a car with a high center of gravity is traveling at a speed such that its trucks are directly over successively low joints at the same time as the car rocks to the side of the low joints, the rocking will become more and more severe until the wheels on the opposite side of the low joints lift off the rail. The speed at which wheel lift occurs is between 10 and 25 miles per hour. Tests indicate that lift can occur as early as the third rail joint when the cross level deviation is $\frac{3}{4}$ -inch, or more, when measured under load. Derailments from this cause may occur on welded rail where the rail has assumed a jointed rail condition from the "memory" at the former joints. Refer to Section VI Track Train Dynamics for additional information on this subject.

3. Track Measurements

Whenever excessive change in cross level, irregular cross level, major deviation from uniform profile, exceptions from standard gage and excessive or inadequate superelevation may have caused or contributed to the derailment, measurements of the actual conditions need to be obtained for comparison with the railroad's standards.

Definite procedures for obtaining the measurements and displaying the results on an appropriate plan must be established. Suggestions on these important aspects of the investigation follow.

Measurements should be obtained over a distance of at least 300 feet ahead of the POD and extend 100 feet beyond the POD unless the track has been seriously disturbed. The measurements should be recorded under loaded conditions, if possible, by spotting a loaded car at each station or joint. In case unloaded measurements are obtained, allowance should be included for the additional deflection that occurs with load.

Stations need to be marked along the track uniformly, usually every 15'-6" as shown in Figure V-6. In case the 15'-6" spacing does not correctly relate the existing situation, such as measurements at joints in jointed rail territory, another stationing distance may be selected for supplementing the basic information. Data from both sets of distances should then be obtained.

V-9

ST011772

EXHIBIT 7

000807

AUTOMATED TRACK INSPECTION PROGRAM

TRACK GEOMETRY INSPECTION REPORT

ST Albans, VT to Windsor, VT

NECR-0456

NECR

9309 Feet before MP 131 to MP 1 - 1474



Federal Railroad Administration
Office of Safety
Washington, D.C.

Printed 06/08/04 12:21:59 PM
ENSCO Editor v \$Revision: 1.27 \$ \$Date: 2004/02/12 17:53:36 \$

000803

DEPARTMENT OF TRANSPORTATION
Federal Railroad Administration
Excerpted from 49 CFR Part 213

Sec. 213.53 Gage

Class of Track	Must be at least	but not more than
Excepted Track	N/A	4 ft 10 1/4"
Class 1 Track	4 ft 8"	4 ft 10"
Class 2 and 3 Track	4 ft 8"	4 ft 9 3/4"
Class 4 and 5 Track	4 ft 8"	4 ft 9 1/2"

Sec. 213.55 Alinement

Class of track	Tangent Track The deviation of the mid-offset from a 62-foot line may not be more than-- (inches) Note 1	Curved The deviation of the mid-ordinate from a 31-foot chord may not be more than-- (inches) Note 2	Track The deviation of the mid-ordinate from a 62-foot chord may not be more than-- (inches) Note 2
Class 1 track..	5	N/A Note 3	5
Class 2 track..	3	N/A Note 3	3
Class 3 track..	1 3/4	1 1/4	1 3/4
Class 4 track..	1 1/2	1	1 1/2
Class 5 track..	3/4	1/2	5/8

1. The ends of the line shall be at points on the gage side of the line rail, five-eighths of an inch below the top of the railhead. Either rail may be used as the line rail, however, the same rail shall be used for the full length of that tangential segment of track.
2. The ends of the chord shall be at points on the gage side of the outer rail, five-eighths of an inch below the top of the railhead.
3. N/A--Not Applicable.

Sec. 213.57 Curves; elevation and speed limitations.

- (a) The maximum crosslevel on the outside rail of a curve may not be more than 8 inches on track Classes 1 and 2 and 7 inches on Classes 3 through 5. Except as provided in Sec. 213.63, the outside rail of a curve may not be lower than the inside rail.
- (b)(1) The maximum allowable operating speed for each curve is determined by the following formula--

$$V_{\max} = \sqrt{((Ea + 3)/(0.0007 * D))}$$

- (c)(1) For rolling stock meeting the requirements specified in paragraph (d) of this section, the maximum operating speed for each curve may be determined by the following formula--

$$V_{\max} = \sqrt{((Ea + 4)/(0.0007 * D))}$$

Sec. 213.59 Elevation of curved track; runoff.

- (a) If a curve is elevated, the full elevation shall be provided throughout the curve, unless physical conditions do not permit. If elevation runoff occurs in a curve, the actual minimum elevation shall be used in computing the maximum allowable operating speed for that curve under Sec. 213.57(b).
- (b) Elevation runoff shall be at a uniform rate, within the limits of track surface deviation prescribed in Sec. 213.63, and it shall extend at least the full length of the spirals. If physical conditions do not permit a spiral long enough to accommodate the minimum length of runoff, part of the runoff may be on tangent track.

DEPARTMENT OF TRANSPORTATION
Federal Railroad Administration
Excerpted from 49 CFR Part 213

000809

Sec. 213.63 Track surface.

	1	2	3	4	5
The runoff in any 31 feet of rail at the end of a raise may not be more than	3 1/2	3	2	1 1/2	1
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than....	3	2 3/4	2 1/4	2	1 1/4
The deviation from zero crosslevel at any point on tangent or reverse crosslevel elevation on curves may not be more than..	3	2	1 3/4	1 1/4	1
The difference in crosslevel between any two points less than 62 feet apart may not be more than Note 1,2	3	2 1/4	2	1 3/4	1 1/2
Where determined by engineering decision prior to the promulgation of this rule, due to physical restrictions on spiral length and operating practices and experience, the variation in crosslevel on spirals per 31 feet may not be more than..	2	1 3/4	1 1/4	1	3/4

1. Except as limited by Sec. 213.57(a), where the elevation at any point in a curve equals or exceeds 6 inches, the difference in crosslevel within 62 feet between that point and a point with greater elevation may not be more than 1 1/2 inches.
2. However, to control harmonics on Class 2 through 5 jointed track with staggered joints, the crosslevel differences shall not exceed 1 1/4 inches in all of six consecutive pairs of joints, as created by 7 low joints. Track with joints staggered less than 10 feet shall not be considered as having staggered joints. Joints within the 7 low joints outside of the regular joint spacing shall not be considered as joints for purposes of this footnote.

DEPARTMENT OF TRANSPORTATION
Federal Railroad Administration
Excerpted from 49 CFR Part 213

000810

Sec. 213.323 Gage

Class	Must be at least	but not more than	Change in 31 ft
6	4 ft 8"	4 ft 9 1/4"	1/2"
7	4 ft 8"	4 ft 9 1/4"	1/2"
8	4 ft 8"	4 ft 9 1/4"	1/2"
9	4 ft 8 1/4"	4 ft 9 1/4"	1/2"

Sec. 213.327 Alinement.

(a) Uniformity at any point along the track is established by averaging the measured mid-chord offset values for nine consecutive points centered around that point and which are spaced according to the following table:

Chord length	Spacing
31	7 ft 9"
62	15 ft 6"
124	31 ft 0"

b) For a single deviation, alinement may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than— (inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than— (inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than— (inches)
6	1/2	3/4	1 1/2
7	1/2	1/2	1 1/4
8	1/2	1/2	3/4
9	1/2	1/2	3/4

(c) For three or more non-overlapping deviations from uniformity in track alinement occurring within a distance equal to five times the specified chord length, each of which exceeds the limits in the following table, each owner of the track to which this subpart applies shall maintain the alinement of the track within the limits prescribed for each deviation:

Class of track	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than— (inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than— (inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than— (inches)
6	3/8	1/2	1
7	3/8	3/8	7/8
8	3/8	3/8	1/2
9	3/8	3/8	1/2

Sec. 213.329 Curves, elevation and speed limitations.

(a) The maximum crosslevel on the outside rail of a curve may not be more than 7 inches. The outside rail of a curve may not be more than 1/2 inch lower than the inside rail.

(b)(1) The maximum allowable operating speed for each curve is determined by the following formula—

$$V_{\max} = \sqrt{((Ea + 3)/(0.0007 * D))}$$

(c) For rolling stock meeting the requirements specified in paragraph (d) of this section, the maximum operating speed for each curve may be determined by the following formula:

$$V_{\max} = \sqrt{((Ea + Eu)/(0.0007 * D))}$$

DEPARTMENT OF TRANSPORTATION
Federal Railroad Administration
Excerpted from 49 CFR Part 213

000811

Sec. 213.331 Track surface.

a) For a single deviation in track surface:

	6	7	8	9
The deviation from uniform profile (Note 1) on either rail at the midordinate of a 31-foot chord may not be more than...	1	1	3/4	1/2
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than....	1	1	1	3/4
The deviation from uniform profile on either rail at the mid-ordinate of a 124-foot chord may not be more than....	1 3/4	1 1/2	1 1/4	1 1/4
The difference in crosslevel between any two points less than 62 feet apart may not be more than Note 2	1 1/2	1 1/2	1 1/2	1 1/2

1. Uniformity for profile is established by placing the midpoint of the specified chord at the point of maximum measurement. However, to control harmonics on jointed track with staggered joints, the crosslevel differences shall not exceed 1 1/4 inches in all of six consecutive pairs of joints, as created by 7 joints. Track with joints staggered less than 10 feet shall not be considered as having staggered joints. Joints within the 7 low joints outside of the regular joint spacing shall not be considered as joints.

(b) For three or more non-overlapping deviations in track surface occurring within a distance equal to five times the specified chord length, each of which exceeds the limits in the following table:

	6	7	8	9
The deviation from uniform profile on either rail at the midordinate of a 31-foot chord may not be more than...	3/4	3/4	1/2	3/8
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than....	3/4	3/4	3/4	1/2
The deviation from uniform profile on either rail at the mid-ordinate of a 124-foot chord may not be more than....	1 1/4	1	7/8	7/8

000812

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Exception List Section
9309 Feet before MP 131 to MP 1 - 1474

Page 1
06/08/04
NECR-0456

MP	Feet	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
0	2	Class Chg	4.00					00.000000	000.000000
0	2	Track	1.00					00.000000	000.000000
0	2	State Line	VT					00.000000	000.000000
0	1364	Track	5.00					44.817209	-073.091080
0	1365	Class Chg	2.00					44.817207	-073.091077
0	1450	Track	7.00					44.817077	-073.090800
0	1480	Class Chg	1.00					44.817026	-073.090700
0	1580	Track	5.00					44.816858	-073.090392
0	1624	Class Chg	2.00					44.816783	-073.090251
0	5098	Class Chg	3.00					44.808500	-073.087815
0	5541	Warp 62	2.14	20	T	2 3	5	44.807423	-073.088607
0	6292	Warp 62	2.27	59	T	1 3	5	44.805614	-073.089969
131	9309	Down MP	131.00					44.798325	-073.095434
130	5281	Down MP	130.00					44.785284	-073.103647
129	5306	Down MP	129.00					44.770838	-073.105448
128	5314	Down MP	128.00					44.757512	-073.098975
127	5323	Down MP	127.00					44.745592	-073.087513
127	695	Warp 62	2.45	48	S	1 3	5	44.744283	-073.085547
126	5238	Down MP	126.00					44.732680	-073.081738
125	5274	Down MP	125.00					44.718570	-073.085982
125	1238	Crosslevel	1.88	2	T	2 3	5	44.715429	-073.087783
125	2184	Crosslevel	2.27	18	T	1 3	5	44.713038	-073.089167
124	5292	Down MP	124.00					44.704702	-073.090912
123	5296	Down MP	123.00					44.691100	-073.085064
123	824	Warp 62	2.20	59	S	2 3	5	44.688861	-073.084916
122	5285	Down MP	122.00					44.676924	-073.083236
121	5283	Down MP	121.00					44.663385	-073.090068
121	73	Crosslevel	3.31	116	T	0 3	5	44.663219	-073.090231
121	99	Crosslevel	2.55	16	T	1 3	5	44.663170	-073.090252
121	137	Crosslevel	2.56	15	T	1 3	5	44.663080	-073.090332
121	192	Warp 62	2.49	61	T	1 3	5	44.662953	-073.090445
121	759	Crosslevel	1.97	3	T	2 3	5	44.661662	-073.091666
121	1990	Warp 62	2.47	61	T	1 3	5	44.658855	-073.094298
121	2047	Warp 62	2.36	57	T	1 3	5	44.658732	-073.094426
120	5284	Down MP	120.00					44.651403	-073.101417
120	2780	Warp 62	2.90	62	S	1 3	5	44.644649	-073.105675
118	10586	Down MP	118.00					44.623651	-073.110168
117	5284	Down MP	117.00					44.609313	-073.109214
117	5588	RQ CB Ver P-P	0.45					44.595460	-073.117466
116	5299	Down MP	116.00					44.596220	-073.117166
116	3145	Warp 62	2.24	17	C	2 3	5	44.587760	-073.118760
115	5285	Down MP	115.00					44.581963	-073.119944

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

000813

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Exception List Section
9309 Feet before MP 131 to MP 1 - 1474

Page 2
06/08/04
NECR-0456

MP	Feet	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
115	361	Class Chg	4.00					44.581019	-073.120149
115	503	Warp 62	1.87	59	S	3 4	5	44.580637	-073.120245
115	1149	Class Chg	3.00					44.578914	-073.120994
114	5286	Down MP	114.00					44.572367	-073.133334
114	1813	Crosslevel	2.05	2	T	1 3	5	44.567591	-073.133367
114	2183	Warp 62	2.44	59	S	1 3	5	44.566635	-073.132956
114	2262	Warp 62	2.33	59	S	1 3	5	44.566429	-073.132865
114	2301	Warp 62	2.44	60	S	1 3	5	44.566327	-073.132817
114	2592	Warp 62	2.12	57	S	2 3	5	44.565601	-073.132386
114	2508	Lmt Speed 3	51.00					44.564834	-073.131797
114	3139	Warp 62	2.35	57	T	1 3	5	44.564279	-073.131349
114	3388	Warp 62	2.17	56	S	2 3	5	44.563689	-073.130848
113	5282	Down MP	113.00					44.558673	-073.129587
112	5303	Down MP	112.00					44.544231	-073.131748
112	558	Warp 62	2.10	59	S	2 3	5	44.542710	-073.131981
111	5283	Down MP	111.00					44.530314	-073.127340
110	5280	Down MP	110.00					44.516575	-073.121040
109	5294	Down MP	109.00					44.502799	-073.114729
109	3370	Class Chg	2.00					44.494029	-073.110723
108	5284	Down MP	108.00					44.489064	-073.110681
108	1401	Class Chg	3.00					44.485800	-073.108615
108	1976	Warp 62	2.28	59	T	1 3	5	44.484778	-073.106952
107	5290	Down MP	107.00					44.481178	-073.095943
107	396	Warp 62	2.55	57	S	1 3	5	44.481468	-073.094493
107	436	Warp 62	2.15	58	S	2 3	5	44.481503	-073.094347
105	10582	Down MP	105.00					44.472962	-073.058927
105	191	Warp 62	2.28	59	T	1 3	5	44.472686	-073.058308
104	5272	Down MP	104.00					44.464833	-073.042237
103	5307	Down MP	103.00					44.454961	-073.028144
102	5281	Down MP	102.00					44.440825	-073.023624
102	2387	Gage Wide	57.88	3	C	1 3	5	44.434463	-073.021488
101	5292	Down MP	101.00					44.427676	-073.015741
100	5335	Down MP	100.00					44.415439	-073.004623
99	5248	Down MP	99.00					44.403512	-072.993448
98	5293	Down MP	98.00					44.397251	-072.975306
97	5295	Down MP	97.00					44.391418	-072.956812
96	5286	Down MP	96.00					44.384548	-072.939209
95	5284	Down MP	95.00					44.380877	-072.919874
94	5299	Down MP	94.00					44.376737	-072.900812
93	5289	Down MP	93.00					44.372460	-072.881534
91	10574	Down MP	91.00					44.362907	-072.843443
90	5299	Down MP	90.00					44.357234	-072.824877

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

000814

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Exception List Section
9309 Feet before MP 131 to MP 1 - 1474

Page 3
06/08/04
NECR-0456

MP	Feet	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
90	2469	Gage Wide	58.09	6	C	0 3	5	44.355204	-072.816081
90	3078	Warp 62	2.20	62	S	2 3	5	44.355673	-072.813866
89	7098	Down MP	89.00					44.355159	-072.805155
88	5295	Down MP	88.00					44.351277	-072.785699
88	3229	RQ CB Ver P-P	0.45					44.348595	-072.773980
87	5282	Down MP	87.00					44.345412	-072.767540
86	5051	Down MP	86.00					44.336411	-072.753043
85	5647	Down MP	85.00					44.325458	-072.738139
84	5167	Down MP	84.00					44.316570	-072.722897
84	2756	Lmt Speed 3	58.00					44.314443	-072.711996
83	5293	Down MP	83.00					44.314760	-072.703786
82	5296	Down MP	82.00					44.304698	-072.690913
80	10572	Down MP	80.00					44.285826	-072.663117
79	5288	Down MP	79.00					44.275925	-072.649906
78	5286	Down MP	78.00					44.269724	-072.631726
78	2357	Warp 62	2.16	21	T	2 3	5	44.266297	-072.624118
77	5299	Down MP	77.00					44.262009	-072.614616
77	1940	Warp 62	2.19	56	S	2 3	5	44.258738	-072.608894
77	14907	Gage Wide	57.99	4	S	1 3	5	44.228482	-072.607660
74	15854	Down MP	74.00					44.228263	-072.611249
73	5290	Down MP	73.00					44.217758	-072.624425
72	5306	Down MP	72.00					44.204720	-072.633330
71	5282	Down MP	71.00					44.191173	-072.640084
70	5301	Down MP	70.00					44.177507	-072.643724
69	5273	Down MP	69.00					44.166953	-072.656368
68	5293	Down MP	68.00					44.152704	-072.656774
68	818	Warp 62	2.13	62	S	2 3	5	44.150491	-072.656990
68	1748	RQ CB Ver P-P	0.43					44.148074	-072.658180
66	10567	Down MP	66.00					44.125570	-072.667415
65	5236	Down MP	65.00					44.112915	-072.676098
64	5333	Down MP	64.00					44.111478	-072.695004
64	2329	Gage Wide	57.94	6	C	1 3	5	44.112831	-072.703577
64	4871	Gage Wide	58.01	6	C	0 3	5	44.116728	-072.711554
63	5288	Down MP	63.00					44.117158	-072.713007
999	2047	Down MP	999.00					44.117199	-072.713085
999	3145	Gage Wide	57.96	10	C	1 3	5	44.116278	-072.724756
999	3305	Gage Wide	57.97	10	C	1 3	5	44.116071	-072.725304
998	5295	Down MP	998.00					44.111450	-072.728633
61	5270	Down MP	61.00					44.097410	-072.732532
61	4619	RQ CB Ver P-P	0.46					44.085166	-072.736814
60	5302	Down MP	60.00					44.083505	-072.737978
60	2921	Warp 62	2.16	62	S	2 3	5	44.076171	-072.742385

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Exception List Section
9309 Feet before MP 131 to MP 1 - 1474

000815

Page 4
06/08/04
NECR-0456

MP	Feet	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
60	2951	Warp 62	2.49	61	S	1 3	5	44.076112	-072.742468
59	5195	Down MP	59.00					44.070790	-072.745833
58	5385	Down MP	58.00					44.056176	-072.744171
58	4008	Gage Wide	58.02	8	S	0 3	5	44.045278	-072.744550
58	4441	Gage Wide	57.98	9	C	1 3	5	44.044142	-072.744490
58	5201	Gage Wide	57.87	3	S	1 3	5	44.042169	-072.745552
57	5278	Down MP	57.00					44.041998	-072.745734
57	839	Gage Wide	58.06	9	C	0 3	5	44.044129	-072.744493
999	1677	Down MP	999.00					44.041991	-072.745755
56	5249	Down MP	46.00					44.030176	-072.756489
55	5326	Down MP	55.00					44.015756	-072.757193
54	5298	Down MP	54.00					44.001679	-072.753061
53	5282	Down MP	53.00					43.987360	-072.750491
52	5276	Down MP	52.00					43.973124	-072.747346
52	1997	RQ CB Ver P-P	0.42					43.968180	-072.744134
51	5295	Down MP	51.00					43.961456	-072.735900
50	5291	Down MP	50.00					43.951379	-072.721453
49	5362	Down MP	49.00					43.940959	-072.708384
49	3409	RQ CB Ver P-P	0.45					43.933276	-072.701185
48	5240	Down MP	48.00					43.930998	-072.695018
47	5261	Down MP	47.00					43.924542	-072.677243
47	3823	Warp 62	2.49	43	S	1 3	5	43.922148	-072.663143
46	5299	Down MP	46.00					43.920348	-072.658189
46	3916	Lmt Speed 3	58.00					43.909205	-072.653389
45	5302	Down MP	45.00					43.906821	-072.652293
45	1541	RQ CB Ver P-P	0.41					43.902800	-072.650597
45	5259	RQ CB Ver P-P	0.51					43.892653	-072.649693
44	5271	Down MP	44.00					43.892617	-072.649664
44	3330	Warp 62	2.17	62	C	2 3	5	43.884419	-072.644363
43	5293	Down MP	43.00					43.879122	-072.643107
42	5390	Down MP	42.00					43.865100	-072.641683
42	2739	Lmt Speed 3	57.00					43.856927	-072.645658
40	10468	Down MP	40.00					43.837381	-072.643070
40	7387	Crosslevel	1.95	1	T	2 3	5	43.824349	-072.622834
40	7445	Warp 62	2.26	59	T	1 3	5	43.824347	-072.622608
38	10586	Down MP	38.00					43.822812	-072.611020
38	964	Gage Wide	57.90	4	S	1 3	5	43.821309	-072.608022
38	1050	Gage Wide	57.95	7	S	1 3	5	43.821194	-072.607740
38	1128	Gage Wide	57.94	5	S	1 3	5	43.821091	-072.607479
38	1410	Gage Wide	57.96	18	C	1 3	5	43.820941	-072.606433
38	1559	Gage Wide	57.99	10	C	1 3	5	43.820803	-072.605906
38	1633	Gage Wide	57.95	9	C	1 3	5	43.820808	-072.605614

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

000816

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Exception List Section
9309 Feet before MP 131 to MP 1 - 1474

Page 5
06/08/04
NECR-0456

MP	Feet	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
38	1670	Gage Wide	57.87	3	C	1 3	5	43.820809	-072.605473
38	4426	Warp 62	2.12	20	T	2 3	5	43.822545	-072.595361
37	5247	Down MP	37.00					43.823002	-072.592303
37	5076	Gage Wide	57.98	7	C	1 3	5	43.827506	-072.574309
36	5307	Down MP	36.00					43.827555	-072.573424
34	10580	Down MP	34.00					43.818237	-072.545608
34	1041	Warp 62	2.62	58	S	1 3	5	43.820842	-072.544026
34	1201	Gage Wide	57.90	4	S	1 3	5	43.821206	-072.543689
34	1208	Gage Wide	57.86	5	C	1 3	5	43.821222	-072.543674
34	1311	Gage Wide	57.96	4	C	1 3	5	43.821444	-072.543444
34	2963	RQ CB Ver P-P	0.46					43.823796	-072.538135
34	5608	Warp 62	2.15	58	S	2 3	5	43.823453	-072.528533
34	5647	Warp 62	2.38	58	S	1 3	5	43.823375	-072.528410
34	5803	Warp 62	2.12	57	S	2 3	5	43.823299	-072.527828
34	6304	Gage Wide	58.04	7	C	0 3	5	43.822613	-072.526174
34	9116	Warp 62	2.11	20	T	2 3	5	43.820761	-072.523537
31	17684	Down MP	31.00					43.801874	-072.504773
31	1361	Gage Wide	57.99	3	C	1 3	5	43.798161	-072.504720
30	5300	Down MP	30.00					43.790741	-072.494443
30	4003	Gage Wide	58.03	12	S	0 3	5	43.784909	-072.481851
30	4613	Gage Wide	58.15	29	C	0 3	5	43.784043	-072.479877
29	5285	Down MP	29.00					43.782859	-072.477935
999	1279	Down MP	999.00					43.782864	-072.477921
999	2252	Warp 62	2.12	50	S	2 3	5	43.778936	-072.471374
999	2930	Lmt Speed 3	58.00					43.778275	-072.468993
999	3080	Gage Wide	58.16	5	C	0 3	5	43.778211	-072.468438
28	5291	Down MP	28.00					43.780461	-072.460901
28	5179	Warp 62	2.10	58	S	2 3	5	43.774977	-072.449589
27	5280	Down MP	27.00					43.774746	-072.449857
27	415	Gage Wide	57.98	13	S	1 3	5	43.773724	-072.450537
27	471	Gage Wide	58.02	5	S	0 3	5	43.773581	-072.450614
27	863	Gage Wide	58.18	13	C	0 3	5	43.772566	-072.451078
27	895	Gage Wide	57.94	4	C	1 3	5	43.772499	-072.451133
27	1211	Warp 62	2.19	62	S	2 3	5	43.771648	-072.451352
27	2586	Warp 62	2.18	62	T	2 3	5	43.767860	-072.451173
27	3081	Gage Wide	57.89	3	C	1 3	5	43.766508	-072.451247
27	3150	Gage Wide	57.96	7	C	1 3	5	43.766318	-072.451276
27	3379	Warp 62	2.16	62	S	2 3	5	43.765730	-072.451561
27	3455	Warp 62	2.18	61	S	2 3	5	43.765531	-072.451647
26	5237	Down MP	26.00					43.760739	-072.451506
25	5278	Down MP	25.00					43.747466	-072.443597
24	5354	Down MP	24.00					43.734597	-072.434239

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Exception List Section
9309 Feet before MP 131 to MP 1 - 1474

000817

Page 6
06/08/04
NECR-0456

MP	Feet	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
24	2049	Warp 62	2.12	59	S	2 3	5	43.728999	-072.433774
24	2410	Gage Wide	57.98	4	C	1 3	5	43.727967	-072.433590
24	2656	Gage Wide	57.99	11	C	1 3	5	43.727341	-072.433304
24	3520	Gage Wide	58.08	12	C	0 3	5	43.725412	-072.431498
24	3905	Gage Wide	58.15	12	C	0 3	5	43.724760	-072.430345
24	4099	Gage Wide	57.95	11	C	1 3	5	43.724488	-072.429706
24	4293	Warp 62	2.10	58	S	2 3	5	43.724298	-072.429021
23	5286	Down MP	23.00					43.723531	-072.425482
23	2259	Lmt Speed 3	58.00					43.717818	-072.417131
22	5277	Down MP	22.00					43.712510	-072.416173
22	2114	Class Chg	2.00					43.706806	-072.414907
22	3693	Warp 62	2.63	57	S	1 2	5	43.704166	-072.410498
21	5297	Down MP	21.00					43.701699	-072.405726
21	1692	Class Chg	3.00					43.697237	-072.403986
20	5235	Down MP	20.00					43.688352	-072.398709
19	5342	Down MP	19.00					43.675406	-072.390364
18	5283	Down MP	18.00					43.667155	-072.374267
17	5283	Down MP	17.00					43.663074	-072.355335
17	4217	RQ CB Ver P-P	0.46					43.658659	-072.340782
17	7155	Crosslevel	-2.25	4	T	1 3	5	43.654956	-072.330963
17	7199	Crosslevel	-2.68	13	T	1 3	5	43.654896	-072.330819
17	7250	Warp 62	2.33	59	T	1 3	5	43.654825	-072.330653
17	7271	Crosslevel	-1.86	1	T	2 3	5	43.654796	-072.330584
17	7624	Crosslevel	-2.04	5	T	1 3	5	43.654298	-072.329440
17	8673	Class Chg	2.00					43.652742	-072.326123
17	9145	Warp 62	2.45	58	T	1 2	5	43.652068	-072.324603
17	13846	Class Chg	3.00					43.641950	-072.318666
17	14475	Gage Wide	57.92	15	S	1 3	5	43.640769	-072.320377
14	15867	Down MP	14.00					43.638797	-072.324880
14	3301	RQ CB Ver P-P	0.42					43.631503	-072.331024
14	3195	Warp 62	2.53	14	T	1 3	5	43.631789	-072.330938
14	3216	Warp 62	2.50	21	T	1 3	5	43.631733	-072.330955
14	3899	Warp 62	2.29	20	T	1 3	5	43.629898	-072.331450
13	5288	Down MP	13.00					43.626187	-072.332610
13	1290	Crosslevel	1.94	2	T	2 3	5	43.622734	-072.333647
13	1348	Warp 62	2.20	59	T	2 3	5	43.622577	-072.333684
12	5299	Down MP	12.00					43.612155	-072.334521
12	610	Gage Wide	57.88	4	S	1 3	5	43.610577	-072.333751
12	1496	Warp 62	2.23	60	S	2 3	5	43.609052	-072.331236
11	5270	Down MP	11.00					43.600404	-072.331130
11	4448	Warp 62	2.21	62	S	2 3	5	43.593081	-072.344186
10	5295	Down MP	10.00					43.592571	-072.347304

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Exception List Section
9309 Feet before MP 131 to MP 1 - 1474

000818

Page 7
06/08/04
NECR-0456

MP	Feet	Parameter	Value	Length	TSC	L-P Class	Track	Latitude	Longitude
10	878	RQ CB Ver P-P	0.44					43.591586	-072.350306
9	5336	Down MP	9.00					43.586660	-072.365683
8	5236	Down MP	8.00					43.578776	-072.381403
8	496	Gage Wide	58.01	11	C	0 3	5	43.577664	-072.382453
8	4697	RQ CB Ver P-P	0.51					43.566425	-072.384375
7	5292	Down MP	7.00					43.564791	-072.384383
6	5302	Down MP	6.00					43.550259	-072.384217
5	5257	Down MP	5.00					43.536267	-072.388402
4	5308	Down MP	4.00					43.523335	-072.397012
3	5298	Down MP	3.00					43.509675	-072.399006
2	5289	Down MP	2.00					43.497811	-072.388749
1	5308	Down MP	1.00					43.483966	-072.384225
1	1474	Warp 62	2.68	39	S	1 3	5	43.479936	-072.384727

NOTES:

Runoff exceptions are for information only

RQ (Ride Quality) exceptions are for information only

000819

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Curve Analysis Section
9309 Feet before MP 131 to MP 1 - 1474

Page 1
06/08/04
NECR-0456

Crosslevel :

+ = L Rail High
- = R Rail High

Curvature :

+ = Curve to Right
- = Curve to Left

Track Number: 5

				Average					Limiting Point						Limiting Speed at						
Starting		Ending		Length	Curve	Elev	Speed		MP	Feet	Curve	Elev	Total	Ft	Grp	Limiting Speed at					
MP	Dist	MP	Dist		Deg/Min	Inches	Post	Lmt			Deg/Min	Inches				4.0	5.0	6.0	7.0	8.0	9.0
0	1303	0	1978	665	1/59	1.37	80	50	0	1554	1/58	0.44	339	1	56	62	68	73	78	82	
0	1978	0	2140	163	1/33	1.97	15	62	0	1982	1/35	1.31	0	0	69	75	81	86	91	96	
0	2140	0	2638	499	2/8	1.09	15	52	0	2380	2/8	1.09	0	0	58	63	68	73	77	81	
0	2638	0	2778	141	0/33	1.27	15	103	0	2638	0/37	1.59	0	0	113	123	132	140	148	156	
0	2778	0	3317	520	4/28	2.05	15	39	0	3316	4/28	1.81	0	0	43	46	49	52	55	58	
0	3317	0	3824	508	5/49	1.67	15	34	0	3526	5/49	1.67	0	0	37	40	43	46	48	51	
0	3883	0	5010	1128	3/58	0.83	15	35	0	4165	3/45	0.23	0	0	40	44	48	52	55	59	
131	3625	131	5148	1524	-1/59	-3.83	59	68	131	4394	-2/2	-3.66	0	0	73	77	82	86	90	94	
130	4313	129	111	1105	-1/25	-2.35	59	71	130	5115	-1/27	-2.20	0	0	77	83	89	94	99	104	
129	2023	129	4835	2813	-1/28	-3.02	59	72	129	4349	-1/35	-2.73	0	0	77	83	88	93	98	102	
128	479	128	1729	1251	1/34	3.25	59	71	128	1004	1/39	2.93	0	0	77	82	87	92	96	101	
128	3593	128	4838	1246	-2/34	-3.58	59	59	128	4410	-2/36	-3.42	0	0	63	67	71	75	79	82	
127	582	127	2502	1921	1/56	3.25	59	63	127	2090	2/1	2.72	0	0	68	73	78	82	87	91	
127	2502	127	4300	1799	0/58	1.90	59	79	127	2513	1/4	1.76	0	0	87	94	101	107	113	119	
127	4300	126	1221	2160	0/27	0.99	59	103	127	5060	0/28	0.61	0	0	117	129	140	150	160	169	
126	4859	125	480	896	1/40	3.05	59	69	126	5207	1/39	2.53	0	0	74	80	85	90	95	99	
125	2222	125	4890	2669	-0/58	-1.19	59	75	125	4490	-1/3	-1.20	0	0	83	91	98	105	111	117	
124	1342	124	3043	1702	-1/58	-2.06	59	59	124	2295	-2/0	-1.95	0	0	65	70	75	79	84	88	
124	4573	123	1059	1783	2/58	5.06	59	61	123	210	3/1	4.85	0	0	64	68	71	74	77	80	
123	1059	123	2108	1050	-2/12	-3.71	59	65	123	2051	-2/11	-3.43	0	0	69	74	78	82	86	90	
123	2108	123	2758	651	-2/19	-3.56	59	62	123	2170	-2/20	-3.20	0	0	66	70	74	78	82	86	
123	3401	123	4351	951	2/54	2.11	40	50	123	3934	2/54	2.11	0	0	54	59	63	66	70	73	
123	4623	122	660	1323	2/19	2.83	40	59	123	5228	2/20	2.66	0	0	63	68	72	76	80	84	
122	3432	122	4594	1163	2/20	4.65	59	67	122	3837	2/16	4.17	0	0	71	75	79	83	87	90	
120	1065	120	2922	1858	-2/57	-4.37	59	59	120	2181	-2/59	-4.38	0	0	63	66	70	73	76	79	
120	5266	120	6399	1134	1/52	3.06	59	67	120	5838	1/55	3.00	0	0	72	77	81	86	90	94	
118	655	118	2696	2042	-1/58	-2.66	59	63	118	1551	-2/1	-2.54	0	0	68	73	77	82	86	90	

EXHIBIT 6 - Part 2

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Curve Analysis Section
9309 Feet before MP 131 to MP 1 - 1474
Crosslevel : + = L Rail High
 - = R Rail High

Page 2
06/08/04
NECR-0456

Curvature :
+ = Curve to Right
- = Curve to Left

Track Number: 5

Starting		Ending		Average				Limiting Point				Total		Limiting Speed at						
MP	Dist	MP	Dist	Length	Curve Deg/Min	Elev Inches	Post	Lmt	MP	Feet	Curve Deg/Min	Elev Inches	Ft	Grp	4.0	5.0	6.0	7.0	8.0	9.0
118	3526	117	717	2476	1/58	3.24	59	63	118	4325	2/0	2.60	0	0	68	73	78	82	86	90
117	4421	116	233	1112	-1/1	-1.42	59	75	117	4677	-0/58	-0.85	0	0	84	92	99	106	113	119
116	1029	116	2315	1287	-1/58	-1.84	59	59	116	1860	-1/56	-1.73	77	3	64	70	75	79	84	88
116	2818	116	4023	1206	1/2	0.78	59	65	116	3294	1/5	0.23	0	0	74	82	90	97	103	110
115	298	115	1504	1207	2/26	3.70	59	60	115	975	2/35	3.56	0	0	64	68	72	76	79	83
115	1504	115	1803	300	2/1	3.59	60	67	115	1525	2/1	3.41	0	0	72	77	81	85	89	93
115	1803	115	2270	468	2/40	3.71	60	60	115	2269	2/42	3.76	99	2	63	67	71	75	78	82
115	2270	115	3160	891	2/50	3.88	60	58	115	2581	2/52	3.73	331	1	62	65	69	73	76	79
115	3760	115	5179	1420	-2/59	-3.38	50	54	115	5120	-3/9	-3.54	0	0	58	62	65	69	72	75
115	5179	114	1581	1689	-3/27	-3.38	50	51	114	462	-3/27	-3.21	0	0	54	58	61	64	68	70
114	2071	114	2901	831	-3/42	-3.82	59	51	114	2508	-3/42	-3.82	97	1	54	58	61	64	67	70
114	3163	113	142	2262	1/59	4.60	59	73	114	4415	2/0	4.48	0	0	77	82	86	90	94	97
112	414	112	2027	1614	-1/58	-2.29	59	60	112	1292	-2/0	-2.11	0	0	66	71	76	80	84	89
109	3984	109	4922	939	7/32	1.16	20	28	109	4483	7/31	1.03	0	0	30	33	36	39	41	43
109	4922	108	3	366	-5/50	-1.50	20	33	109	5127	-5/33	-1.22	0	0	36	40	43	46	48	51
108	3	108	525	523	-5/35	-1.90	20	34	108	289	-5/35	-1.63	0	0	37	41	44	46	49	52
108	525	108	1330	785	-6/4	-2.35	20	35	108	825	-6/4	-2.35	0	0	38	41	44	46	49	51
108	3013	107	561	2839	-2/26	-4.56	59	64	107	79	-2/33	-4.36	0	0	68	72	76	79	83	86
107	806	107	2803	1998	2/14	3.41	59	63	107	1883	2/16	3.27	0	0	67	72	76	80	84	87
107	5767	107	7129	1363	1/55	2.23	59	62	107	6457	1/56	2.17	0	0	67	72	77	82	86	90
104	2432	103	311	3187	1/27	2.21	59	68	104	3526	1/31	1.90	0	0	74	80	86	91	96	101
102	1952	102	3430	1479	-1/53	-2.54	59	64	102	2734	-1/54	-2.40	0	0	69	74	79	83	88	92
100	4459	99	1246	2036	-1/58	-3.65	59	67	99	764	-2/1	-3.38	0	0	72	76	81	85	89	93
97	3196	97	5194	1999	1/17	2.82	59	74	97	4396	1/22	2.28	0	0	80	86	92	98	103	108
97	5194	96	2644	2737	-2/0	-3.17	59	64	96	1035	-2/5	-2.94	0	0	68	73	78	82	86	90
96	3315	96	4772	1458	1/24	2.18	59	72	96	4352	1/25	2.11	0	0	78	84	90	95	100	105

000821

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Curve Analysis Section
9309 Feet before MP 131 to MP 1 - 1474

Page 3
06/08/04
NECR-0456

Crosslevel :

+ = L Rail High
- = R Rail High

Curvature :

+ = Curve to Right
- = Curve to Left

Track Number: 5

Starting		Ending		Average			Speed		Limiting Point				Total		Limiting Speed at							
MP	Dist	MP	Dist	Length	Curve Deg/Min	Elev Inches	Post	Lmt	MP	Feet	Curve Deg/Min	Elev Inches	Ft	Grp	4.0	5.0	6.0	7.0	8.0	9.0		
93	2648	93	3327	680	0/37	1.16	59	92	93	3028	0/43	1.38	0	0	102	111	120	128	135	142		
91	2888	91	3554	667	2/4	3.95	59	69	91	3285	2/4	3.95	0	0	73	78	82	86	90	94		
91	5192	90	654	762	-1/10	-1.50	45	71	90	355	-1/14	-1.41	0	0	78	85	92	98	104	109		
90	654	90	1215	562	2/16	3.93	45	66	90	1002	2/16	3.93	0	0	70	74	79	82	86	90		
90	1215	90	2937	1723	-3/29	-4.90	45	56	90	2545	-3/27	-4.58	0	0	59	62	66	69	72	74		
90	2937	90	3997	1061	3/41	5.26	45	56	90	3328	3/39	5.05	0	0	59	62	65	68	71	74		
90	3997	90	4301	305	0/58	1.35	59	79	90	4218	0/58	1.25	0	0	87	95	103	110	116	122		
90	4301	90	4619	296	-1/31	-1.97	59	68	90	4507	-1/31	-1.97	0	0	74	80	86	91	96	101		
90	4619	90	5685	1067	3/41	5.26	45	56	90	5019	3/40	5.01	0	0	59	62	65	68	71	73		
90	5685	90	6965	1281	0/58	1.37	45	75	90	6024	0/58	0.88	0	0	84	92	100	107	113	120		
88	2025	88	4309	2285	1/3	2.63	59	82	88	3076	1/1	1.83	0	0	90	97	104	111	117	123		
87	2831	87	3886	1056	0/59	1.80	59	79	87	3885	1/3	1.57	0	0	87	94	101	107	114	119		
87	3886	87	4466	581	1/36	2.09	59	65	87	4043	1/34	1.71	0	0	71	77	83	88	93	98		
86	2857	86	4285	1429	-1/30	-2.54	59	67	86	4043	-1/45	-2.53	0	0	72	78	83	87	92	96		
85	1400	85	2640	1241	0/58	0.94	59	74	85	2144	0/59	0.85	0	0	83	91	99	106	113	119		
85	4226	84	27	969	-2/20	-3.67	45	64	85	4730	-2/20	-3.67	0	0	68	72	76	80	84	87		
84	1057	84	3110	2054	-2/59	-4.78	59	58	84	2756	-3/4	-4.15	602	1	61	65	68	71	75	78		
84	3110	84	4045	936	2/38	4.94	45	63	84	3444	2/31	4.07	0	0	67	71	75	79	82	86		
84	4045	83	1141	2390	1/15	3.11	59	74	83	1140	1/24	2.45	0	0	80	86	92	97	102	107		
83	1141	83	2190	1050	2/19	3.58	59	63	83	1467	2/17	3.35	0	0	67	72	76	80	83	87		
83	2387	83	3965	1579	2/2	4.01	59	68	83	3164	2/11	4.13	0	0	72	77	81	85	88	92		
82	1814	82	3270	1457	-2/29	-4.40	59	63	82	2448	-2/29	-4.03	0	0	67	71	75	79	82	86		
82	4579	82	5768	1190	-3/27	-4.40	50	54	82	5179	-3/28	-4.21	0	0	58	61	64	67	70	73		
82	7125	82	10522	3398	1/31	2.66	50	69	82	9607	1/35	2.36	0	0	75	81	86	91	96	101		
80	2111	80	3707	1597	-3/36	-4.29	50	53	80	3013	-3/39	-4.16	0	0	56	59	63	66	68	71		
79	4048	79	4974	927	1/2	1.66	59	73	79	4284	1/0	0.77	0	0	82	90	97	104	111	117		
77	807	77	2143	1337	3/1	3.26	45	52	77	1804	3/6	2.79	0	0	55	59	63	67	70	73		
77	6948	77	8297	1350	2/1	2.69	59	63	77	7873	2/2	2.66	0	0	68	73	77	82	86	90		

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Curve Analysis Section
9309 Feet before MP 131 to MP 1 - 1474

Crosslevel:

+ = L Rail High
- = R Rail High

Curvature:

+ = Curve to Right
- = Curve to Left

Page 4
06/08/04
NECR-0456

Track Number: 5

Starting		Ending		Length	Average		Speed		Limiting Point				Total		Limiting Speed at							
MP	Dist	MP	Dist		Curve Deg/Min	Elev Inches	Post	Lmt	MP	Feet	Curve Deg/Min	Elev Inches	Fl	Grp	4.0	5.0	6.0	7.0	8.0	9.0		
77	9125	77	10437	1313	3/37	4.28	50	53	77	9738	3/37	4.19	0	0	56	60	63	66	69	72		
77	11237	77	12867	1631	1/29	2.92	50	74	77	12310	1/32	2.89	0	0	79	85	90	95	100	105		
77	13375	77	15325	1951	3/31	4.95	50	56	77	14798	3/45	5.13	0	0	58	62	65	67	70	73		
77	15325	74	1158	1688	-3/32	-4.68	50	55	74	305	-3/31	-4.47	0	0	58	61	65	68	71	73		
74	2895	74	4129	1235	-2/4	-2.91	59	63	74	3423	-2/3	-2.74	0	0	68	73	77	82	86	90		
73	4318	72	346	1335	-1/31	-2.99	59	74	73	5151	-1/32	-2.90	0	0	80	85	90	95	100	105		
72	1240	72	2711	1472	0/58	0.85	59	71	72	2441	1/1	0.61	0	0	80	88	96	103	109	116		
72	4240	71	782	1825	-1/58	-3.08	59	64	72	5199	-2/1	-2.74	0	0	69	73	78	83	87	91		
71	1123	71	2176	1054	0/57	2.35	59	86	71	1877	0/59	2.16	0	0	94	101	108	114	121	126		
71	3408	71	4620	1213	3/9	4.83	50	59	71	4619	3/9	4.73	0	0	62	66	69	72	75	78		
71	4620	70	370	1052	3/35	4.62	50	55	71	5101	3/36	4.59	0	0	58	61	64	67	70	73		
70	1314	70	2923	1610	-3/15	-4.59	50	57	70	2075	-3/18	-4.58	0	0	60	64	67	70	73	76		
70	5203	69	1155	1226	-2/57	-4.88	59	61	69	650	-2/58	-4.85	0	0	65	68	72	75	78	81		
69	2189	69	4056	1868	-0/58	-1.38	59	79	69	2878	-0/59	-1.33	0	0	87	95	102	109	116	122		
69	4908	68	1204	1590	3/10	5.09	50	60	68	449	3/13	5.07	0	0	63	66	70	73	76	79		
68	2081	68	3045	965	2/1	3.42	50	66	68	2567	2/2	3.33	0	0	71	76	80	84	88	92		
68	5498	68	7057	1560	-2/59	-4.54	59	59	68	6273	-3/0	-4.42	0	0	63	66	70	73	76	79		
68	9769	66	1169	1968	2/42	5.04	59	64	66	510	2/46	5.00	0	0	68	71	75	78	81	84		
66	1304	66	2809	1506	-2/32	-3.64	59	60	66	2151	-2/34	-3.54	0	0	64	68	72	76	80	83		
66	4027	66	5017	991	3/26	4.74	50	56	66	4759	3/29	4.66	0	0	59	62	65	68	71	74		
66	5017	65	1199	1419	2/59	4.96	50	60	66	5047	3/1	4.69	0	0	64	67	71	74	77	80		
65	3167	65	5037	1871	3/31	4.73	50	55	65	4348	3/37	4.59	0	0	58	61	64	67	70	73		
65	5037	64	107	404	-2/46	-4.92	50	64	64	37	-2/43	-4.73	0	0	67	71	74	78	81	84		
64	107	64	1088	982	-2/54	-4.92	50	61	64	591	-2/58	-4.84	0	0	65	68	72	75	78	81		
64	1659	64	3180	1522	2/57	4.48	50	60	64	2208	2/55	4.28	0	0	63	67	70	74	77	80		

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Curve Analysis Section

9309 Feet before MP 131 to MP 1 - 1474

Crosslevel :
+ = L Rail High
- = R Rail High

Curvature :

+ = Curve to Right
- = Curve to Left

Page 5
06/08/04
NECR-0456

Track Number: 5

Starting				Ending		Average			Speed		Limiting Point				Total		Limiting Speed at							
MP	Dist	MP	Dist	Length	Curve Deg/Min	Elev Inches	Post	Lmt	MP	Feet	Curve Deg/Min	Elev Inches	Ft	Grp	4.0	5.0	6.0	7.0	8.0	9.0				
64	4333	63	1256	2212	-2/30	-4.16	50	60	63	523	-2/34	-3.53	0	0	64	68	72	76	79	83				
63	1353	999	1325	1998	-2/29	-4.10	50	60	999	509	-2/34	-3.49	0	0	64	68	72	76	79	83				
999	2371	999	3644	1274	-2/57	-4.39	50	58	999	3643	-3/1	-4.08	0	0	61	65	69	72	75	78				
999	3644	999	5188	1545	-3/35	-4.46	50	54	999	4629	-3/34	-4.18	0	0	57	60	63	66	69	72				
998	2015	998	3759	1745	0/58	1.63	59	79	998	2891	1/1	1.41	0	0	87	94	101	108	114	120				
998	4212	61	50	1109	-0/55	-1.70	59	82	998	5000	-0/56	-1.49	0	0	91	99	106	113	120	126				
61	3440	61	4574	1135	1/50	2.58	59	65	61	4158	1/49	2.40	0	0	70	76	80	85	90	94				
61	5259	60	843	887	-1/8	-2.01	59	74	60	275	-1/8	-1.38	0	0	82	89	96	102	108	114				
60	1880	60	3314	1435	3/5	4.95	50	60	60	2537	3/8	4.90	0	0	63	67	70	73	76	79				
60	3314	59	177	2059	-2/58	-3.93	50	57	60	4433	-3/0	-3.79	0	0	60	64	68	71	74	78				
59	1189	59	2103	915	-1/6	-1.25	59	71	59	1688	-1/8	-1.06	0	0	79	87	94	100	106	112				
59	3393	59	4724	1332	2/2	2.40	59	59	59	3966	2/2	1.94	10	1	64	69	74	79	83	87				
59	4916	58	378	848	1/1	1.36	59	75	59	5178	0/57	0.84	0	0	84	93	100	108	114	121				
58	617	58	2269	1653	-1/6	-1.01	59	70	58	1774	-1/7	-0.86	0	0	78	86	93	100	106	112				
58	2998	58	3760	763	-1/10	-2.60	59	82	58	3521	-1/9	-2.47	0	0	89	95	102	107	113	118				
58	3760	57	449	1968	3/48	4.94	59	54	58	4949	3/49	4.79	737	1	57	60	63	66	69	71				
57	529	999	475	1605	3/49	4.92	50	53	57	1350	3/50	4.71	0	0	56	60	63	65	68	71				
999	2126	999	3636	1511	-1/40	-1.94	59	61	999	2882	-1/42	-1.45	0	0	67	73	78	84	88	93				
999	4697	56	257	810	-1/58	-3.23	59	66	999	5098	-1/57	-3.01	0	0	71	76	81	85	89	93				
56	1616	56	3058	1443	-1/25	-1.86	59	68	56	2473	-1/27	-1.73	0	0	75	81	87	92	97	102				
56	4448	55	319	1198	-3/0	-5.06	59	62	56	5162	-3/1	-5.03	0	0	65	68	72	75	78	81				
55	695	55	2023	1329	1/55	4.25	59	70	55	1621	1/57	3.84	0	0	75	80	84	88	92	96				
53	3765	52	1748	3260	-0/42	-1.35	59	89	53	4954	-0/43	-1.05	0	0	100	109	118	126	133	141				

000824

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Curve Analysis Section
9309 Feet before MP 131 to MP 1 - 1474
Crosslevel : + = L Rail High
- = R Rail High
Curvature : + = Curve to Right
- = Curve to Left

Page 6
06/08/04
NECR-0456

Track Number: 5

Starting		Ending		Average			Limiting Point							Total		Limiting Speed at						
MP	Dist	MP	Dist	Length	Curve Deg/Min	Elev Inches	Speed		MP	Feet	Curve Deg/Min	Elev Inches	Ft	Grp	4.0	5.0	6.0	7.0	8.0	9.0		
Post	Lmt																					
52	2399	52	3512	1114	-2/2	-3.38	59	66	52	3145	-2/2	-3.20	0	0	70	75	80	84	88	92		
51	4821	50	374	845	-1/30	-1.70	59	66	50	120	-1/31	-1.64	0	0	72	79	84	90	95	100		
50	2804	50	4700	1897	3/0	4.08	50	57	50	3558	3/6	4.18	0	0	61	64	68	71	74	77		
50	4700	49	406	1069	-3/19	-5.14	50	59	50	5145	-3/15	-4.94	0	0	62	66	69	72	75	78		
49	2193	49	4356	2164	-1/56	-2.94	59	63	49	2818	-1/56	-2.40	0	0	68	73	78	83	87	91		
48	1341	48	2050	710	1/13	2.06	59	76	48	1731	1/16	2.15	0	0	82	89	95	101	106	111		
48	4242	47	422	1442	-1/29	-2.52	59	71	48	4865	-1/31	-2.30	0	0	76	82	88	93	98	103		
47	3753	46	2536	4083	1/56	2.89	59	63	46	1598	1/59	2.54	0	0	68	73	78	82	87	91		
46	3368	46	4386	1019	-2/2	-2.01	59	58	46	3916	-2/4	-1.98	178	1	64	69	74	78	82	86		
45	710	45	2644	1935	0/57	1.69	59	76	45	2268	1/2	1.27	0	0	85	92	99	106	112	118		
45	4521	44	568	1319	-1/56	-3.70	59	67	45	5008	-1/57	-3.16	0	0	72	77	81	86	90	94		
44	568	44	1084	517	-2/18	-4.38	59	67	44	670	-2/18	-4.37	0	0	71	76	80	83	87	90		
44	1836	44	3782	1947	1/27	1.35	59	62	44	2562	1/28	0.96	0	0	69	76	82	87	93	98		
44	4510	43	875	1659	-1/57	-2.37	59	61	43	395	-2/1	-2.22	0	0	66	71	76	80	85	89		
43	875	43	1973	1099	2/33	3.49	59	59	43	1289	2/32	3.17	19	1	63	67	71	75	79	82		
43	1973	43	2353	381	1/13	1.82	59	75	43	2139	1/13	1.77	0	0	82	89	95	101	106	112		
43	2353	42	59	3097	1/2	1.25	59	71	43	4620	1/8	1.08	0	0	79	86	93	100	106	111		
42	886	42	1470	585	-0/34	-1.22	59	96	42	1194	-0/42	-1.50	0	0	105	115	123	131	139	146		
42	2028	42	3176	1149	-2/13	-2.31	59	57	42	2739	-2/15	-2.18	364	1	62	67	71	76	80	84		
42	3591	42	4887	1297	-2/0	-2.53	59	61	42	4141	-2/1	-2.31	0	0	66	71	76	81	85	89		
42	5091	42	7413	2323	0/58	0.94	59	72	42	6034	1/0	0.68	0	0	81	89	97	104	110	117		
42	8559	40	755	2665	-2/28	-4.13	59	62	40	349	-2/31	-3.88	0	0	66	70	74	78	81	85		
40	2334	40	3269	936	4/5	3.89	45	48	40	2744	4/1	3.55	0	0	51	55	58	61	64	66		
40	3598	40	4267	670	-1/33	-1.64	45	65	40	3977	-1/33	-1.65	0	0	71	78	83	88	93	98		
40	5010	40	7346	2337	-2/27	-3.10	45	58	40	6842	-2/28	-2.83	0	0	62	67	71	75	78	82		

000825

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Curve Analysis Section
9309 Feet before MP 131 to MP 1 - 1474
Crosslevel : + = L Rail High
 - = R Rail High
Curvature : + = Curve to Right
 - = Curve to Left

Page 7
06/08/04
NECR-0456

Track Number: 5

Starting		Ending		Average		Speed		Limiting Point				Total		Limiting Speed at						
MP	Dist	MP	Dist	Length	Curve Deg/Min	Elev Inches	Post	Lmt	MP	Feet	Curve Deg/Min	Elev Inches	Ft	Grp	4.0	5.0	6.0	7.0	8.0	9.0
40	9523	38	389	1453	3/13	3.76	45	53	40	10089	3/11	3.34	0	0	57	61	64	68	71	74
38	630	38	2344	1715	-4/28	-4.13	45	47	38	1502	-4/29	-4.04	0	0	50	53	56	59	61	64
38	3068	38	3814	747	0/30	0.72	59	98	38	3466	0/32	0.66	0	0	111	122	132	142	151	159
37	1467	37	3548	2082	-0/56	-1.27	59	76	37	2041	-1/1	-1.13	0	0	84	92	99	106	113	119
37	3987	36	3256	4577	2/28	3.61	59	59	36	2700	2/36	3.41	0	0	63	67	71	75	79	82
36	4391	36	5033	643	-2/17	-4.88	59	70	36	4999	-2/17	-4.86	0	0	74	78	82	85	89	92
36	5033	36	7897	2865	-2/27	-4.53	59	65	36	5274	-2/27	-4.25	0	0	69	73	77	80	84	87
36	8296	36	10371	2076	-4/1	-4.29	45	49	36	9253	-4/2	-3.80	0	0	52	55	58	61	64	67
34	622	34	1525	904	4/2	5.31	45	54	34	1266	4/3	5.21	0	0	56	59	62	65	68	70
34	1525	34	2145	621	3/16	3.90	45	54	34	1727	3/16	3.65	0	0	57	61	64	68	71	74
34	2982	34	4750	1769	4/2	4.26	45	50	34	3974	4/2	4.10	0	0	53	56	59	62	65	68
34	5410	34	7031	1622	2/57	5.29	59	63	34	6310	2/58	5.21	0	0	66	70	73	76	79	82
34	8184	34	8869	666	1/40	2.72	59	70	34	8503	1/41	2.78	0	0	75	80	85	90	95	99
34	11901	34	12870	970	1/54	2.14	59	60	34	12292	1/53	1.76	0	0	65	71	76	81	85	90
34	16535	31	484	1634	3/2	5.37	59	62	34	17512	3/4	5.23	0	0	65	68	72	75	78	81
31	750	31	3240	2491	-2/58	-5.16	59	59	31	2526	-3/7	-4.64	0	0	62	66	69	72	76	79
31	3240	31	4288	1049	2/1	3.08	59	65	31	3646	2/5	3.14	0	0	69	74	79	83	87	91
30	1427	30	2790	1364	-2/1	-3.18	59	62	30	1960	-2/4	-2.60	0	0	67	72	76	81	85	89
30	3727	30	4941	1215	2/4	2.08	59	59	30	4627	2/4	1.98	40	1	64	69	74	78	82	86
999	1721	999	2931	1211	-2/54	-4.20	59	58	999	2930	-2/56	-3.84	79	2	61	65	69	72	75	78
999	2931	999	3571	641	-3/35	-4.78	50	55	999	3232	-3/37	-4.79	0	0	58	62	65	68	71	73
999	3571	999	4719	1149	-2/37	-4.04	50	59	999	4330	-2/44	-3.65	0	0	63	67	70	74	77	81
28	178	28	4426	4249	3/12	4.51	59	55	28	3448	3/22	4.09	2869	2	58	62	65	68	71	74
28	4426	27	95	950	3/9	4.82	55	58	28	4800	3/13	4.58	0	0	61	65	68	71	74	77
27	95	27	1542	1448	-3/0	-5.03	55	60	27	777	-3/0	-4.68	0	0	64	67	71	74	77	80
27	2586	27	3509	924	3/5	4.70	55	59	27	3150	3/6	4.68	0	0	63	66	70	73	76	79
27	3509	26	206	1935	-2/27	-4.13	59	63	27	4980	-2/24	-3.77	0	0	67	72	76	79	83	87

000826

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Curve Analysis Section
9309 Feet before MP 131 to MP 1 - 1474

Page 8
06/08/04
NECR-0456

Crosslevel :

+ = L Rail High
- = R Rail High

Curvature :

+ = Curve to Right
- = Curve to Left

Track Number: 5

Starting		Ending		Length	Average		Speed		MP	Limiting Point		Elev	Total		Limiting Speed at							
MP	Dist	MP	Dist		Curve	Elev	Post	Lmt		Feet	Curve		Ft	Grp	4.0	5.0	6.0	7.0	8.0	9.0		
26	5026	25	1042	1295	-0/56	-1.40	59	80	25	758	-0/56	-1.23	0	0	89	97	104	111	118	124		
25	2929	24	1020	3446	0/59	1.14	59	73	25	4264	0/59	0.73	0	0	82	90	98	105	112	118		
24	1828	24	4753	2926	-2/55	-5.76	59	63	24	4057	-3/1	-5.49	0	0	66	70	73	76	79	82		
23	670	23	3325	2656	2/59	4.29	59	58	23	2259	3/0	4.09	813	6	61	65	69	72	75	78		
22	1506	22	3752	2247	-3/28	-3.97	30	52	22	2340	-3/31	-3.68	0	0	55	59	62	65	68	71		
22	3752	21	730	2276	3/31	4.03	30	51	22	4488	3/35	3.70	0	0	55	58	62	65	68	70		
21	928	21	2247	1320	-1/55	-1.99	30	58	21	1290	-1/55	-1.57	0	0	64	69	74	79	84	88		
21	2247	21	3448	1202	1/25	2.34	59	72	21	2844	1/27	2.30	0	0	78	84	90	95	100	105		
20	572	20	1534	963	-2/1	-2.41	59	61	20	1132	-2/2	-2.39	0	0	66	71	76	80	85	89		
20	1534	20	2691	1158	2/56	3.65	50	53	20	2334	3/0	2.89	0	0	57	61	64	68	71	75		
20	3342	20	5053	1712	-3/0	-4.15	50	57	20	3711	-2/55	-3.71	0	0	61	65	68	72	75	78		
19	2489	18	777	3572	-0/57	-1.51	59	78	19	4064	-1/0	-1.25	0	0	86	94	101	108	114	120		
18	2850	18	4109	1260	2/0	3.37	59	66	18	3544	2/2	3.32	0	0	71	76	80	85	89	92		
17	2371	17	3970	1600	-2/6	-2.45	59	58	17	3067	-2/8	-2.13	11	1	63	68	73	78	82	86		
17	3970	17	5034	1065	3/55	3.13	40	47	17	4555	3/55	3.13	0	0	50	54	57	60	63	66		
17	5867	17	6512	646	-1/27	-2.00	40	68	17	6211	-1/25	-1.67	0	0	75	81	87	93	98	103		
17	6512	17	7081	570	2/0	1.63	40	57	17	6807	2/0	1.63	0	0	63	68	73	78	82	86		
17	7865	17	8317	453	1/38	1.82	40	64	17	8182	1/39	1.82	0	0	70	76	82	87	91	96		
17	8317	17	8847	531	-1/38	-1.28	30	61	17	8596	-1/38	-1.28	0	0	67	73	79	84	89	94		
17	10016	17	10568	553	2/35	1.27	30	48	17	10439	2/36	1.25	0	0	53	58	63	67	71	74		
17	10568	17	10753	186	1/51	0.95	30	54	17	10568	1/54	0.82	0	0	60	66	71	76	81	85		
17	10753	17	11116	364	2/29	1.70	30	52	17	10992	2/29	1.70	0	0	57	62	66	70	74	78		
17	11116	17	11247	132	1/51	1.27	30	57	17	11133	1/54	1.27	0	0	62	68	73	78	83	87		
17	11247	17	12144	898	3/19	1.37	30	43	17	11586	3/19	1.34	0	0	47	52	56	59	63	66		
17	12144	17	13297	1154	2/37	1.62	30	47	17	12147	2/40	1.16	0	0	52	57	61	65	69	73		
17	13297	17	14790	1494	2/51	2.14	30	48	17	14416	3/5	2.02	0	0	52	56	60	64	68	71		
14	376	14	2414	2039	-2/57	-4.63	59	59	14	1874	-3/3	-4.49	0	0	62	66	69	73	76	79		
13	1408	13	2274	867	1/38	2.09	59	66	13	1884	1/40	2.14	0	0	72	77	83	88	92	97		
13	2650	13	4338	1689	-3/1	-5.15	59	61	13	3747	-3/6	-5.04	0	0	64	68	71	74	77	80		

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Curve Analysis Section

9309 Feet before MP 131 to MP 1 - 1474

Crosslevel :

+ = L Rail High
- = R Rail High

Curvature :

+ = Curve to Right
- = Curve to Left

000827

Page 9
06/08/04
NECR-0456

Track Number: 5

Starting				Ending		Average			Speed		Limiting Point				Total		Limiting Speed at					
MP	Dist	MP	Dist	Length	Curve Deg/Min	Elev Inches	Post	Lmt	MP	Feet	Curve Deg/Min	Elev Inches	Ft	Grp	4.0	5.0	6.0	7.0	8.0	9.0		
12	125	12	1415	1291	-5/7	-5.27	40	48	12	1128	-5/6	-5.11	0	0	50	53	55	58	60	62		
12	1415	12	2958	1544	5/1	5.27	40	48	12	2177	5/3	5.18	0	0	50	53	56	58	61	63		
12	2958	12	3473	516	-2/40	-4.03	40	61	12	3344	-2/40	-4.03	0	0	65	69	73	76	80	83		
12	3473	12	5231	1759	5/1	5.17	40	46	12	3869	5/1	4.32	0	0	48	51	54	56	59	61		
12	5231	11	805	845	-1/38	-2.89	59	68	11	289	-1/47	-2.80	0	0	73	78	83	88	92	97		
11	805	11	1874	1070	-1/0	-2.74	59	86	11	1673	-1/3	-2.40	0	0	93	100	106	113	118	124		
11	1874	11	2897	1024	1/30	2.13	59	69	11	2389	1/32	2.12	0	0	75	81	86	91	96	101		
11	3189	11	4659	1471	3/2	5.23	50	61	11	3828	3/5	5.08	0	0	64	68	71	74	77	80		
11	4659	10	277	914	-2/52	-4.60	50	61	11	5041	-2/49	-4.33	0	0	64	68	72	75	79	82		
10	4068	9	33	1302	1/1	1.15	59	72	10	4857	1/7	1.09	0	0	80	88	95	101	107	113		
9	738	9	3584	2847	-1/17	-3.03	59	79	9	2417	-1/17	-2.62	0	0	85	91	97	102	108	113		
9	4846	8	2717	3108	-1/28	-3.45	59	77	8	799	-1/31	-3.33	0	0	82	88	93	98	103	107		
6	766	6	1785	1020	2/59	5.85	59	65	6	1242	3/0	5.86	0	0	68	71	75	78	81	84		
6	4841	5	1985	2402	0/58	2.05	59	80	5	128	1/8	2.15	0	0	87	94	100	106	112	117		
5	2470	5	2948	479	-1/52	-2.37	30	64	5	2780	-1/52	-2.37	0	0	69	75	79	84	89	93		
5	2948	5	3029	82	-0/31	0.08	30	76	5	2948	-0/43	0.04	0	0	88	98	108	116	124	132		
5	3029	5	3804	776	-4/31	-4.29	30	48	5	3410	-4/30	-4.24	0	0	51	54	56	59	62	64		
5	3804	5	4810	1007	1/44	2.32	30	64	5	4467	1/46	2.03	0	0	69	75	80	85	89	94		
4	2279	3	903	3923	-1/57	-4.40	59	70	4	2613	-1/56	-3.75	0	0	75	80	84	88	93	96		
3	1886	3	3603	1718	3/0	5.63	59	63	3	3064	3/0	5.35	0	0	66	70	73	76	79	82		
3	3945	3	4891	947	-1/39	-3.73	59	74	3	4276	-1/43	-3.63	0	0	79	84	89	93	98	102		
2	2621	2	4451	1831	1/51	3.09	59	65	2	3893	1/52	2.46	0	0	70	75	80	85	89	93		

9309 Feet before MP 131 to MP 1 - 1474

NECR-0456

MP		Profile			Align			Gage			Xlevel			Warp			Limit Class	Posted Class	Track
MP	FT	TOT Exc	EXC Fl	CL1 Exc	TOT Exc	EXC Fl	CL1 Exc	TOT Exc	EXC Fl	CL1 Exc	TOT Exc	EXC Fl	CL1 Exc	TOT Exc	EXC Fl	CL1 Exc			
0	2																1	1	1
0	2																4	4	1
0	1364																4	4	1
0	1365																4	4	5
0	1450																2	2	5
0	1480																2	2	7
0	1580																1	1	7
0	1624																1	1	5
0	5098																2	2	5
0	9309													2	79	1	1	3	5
131	5281																3	3	5
130	5306																3	3	5
129	5314																3	3	5
128	5323																3	3	5
127	5238													1	48	1	1	3	5
126	5274																3	3	5
125	5292										2	20	1				1	3	5
124	5296																3	3	5
123	5285													1	59		2	3	5
122	5283																3	3	5
121	5284										4	150	3	3	179	3	0	3	5
120	10586													1	62	1	1	3	5
118	5284																3	3	5
117	5299																3	3	5
116	5285													1	17		2	3	5
115	361																3	3	5
115	1149													1	59		3	4	5
115	5286																3	3	5
114	5282										1	2	1	6	348	4	1	3	5
113	5303																3	3	5
112	5283													1	59		2	3	5
111	5280																3	3	5
110	5294																3	3	5
109	3370																3	3	5
109	5284																2	2	5
108	1401																2	2	5
108	5290													1	59	1	1	3	5
107	10582													2	115	1	1	3	5
105	5272													1	59	1	1	3	5
104	5307																3	3	5
103	5281																3	3	5
102	5292							1	3	1							1	3	5
101	5335																3	3	5
100	5248																3	3	5

Page 25 of 27
000829

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Exception Summary Section
9309 Feet before MP 131 to MP 1 - 1474

Page 2
06/08/04
NECR-0456

MP	FT	Profile		CL1 Exc	Align		CL1 Exc	Gage		CL1 Exc	Xlevel		CL1 Exc	Warp		CL1 Exc	Limit Class	Posted Class	Track
		TOT Exc	EXC Fl		TOT Exc	EXC Fl		TOT Exc	EXC Fl		TOT Exc	EXC Fl							
99	5293																3	3	5
98	5295																3	3	5
97	5286																3	3	5
96	5284																3	3	5
95	5299																3	3	5
94	5289																3	3	5
93	10574																3	3	5
91	5299																3	3	5
90	7098							1	6	1				1	62		0	3	5
89	5295																3	3	5
88	5282																3	3	5
87	5051																3	3	5
86	5647																3	3	5
85	5167																3	3	5
84	5293																3	3	5
83	5296																3	3	5
82	10572																3	3	5
80	5288																3	3	5
79	5286																3	3	5
78	5299													1	21		2	3	5
77	15854							1	4	1				1	56		1	3	5
74	5290																3	3	5
73	5306																3	3	5
72	5282																3	3	5
71	5301																3	3	5
70	5273																3	3	5
69	5293																3	3	5
68	10567													1	62		2	3	5
66	5236																3	3	5
65	5333																3	3	5
64	5288							2	12	2							0	3	5
63	2047																3	3	5
999	5295							2	20	2							1	3	5
998	5270																3	3	5
61	5302																3	3	5
60	5195													2	123	1	1	3	5
59	5385																3	3	5
58	5278							3	20	3							0	3	5
57	1677							1	9	1							0	3	5
999	5249																3	3	5

000850
000850

NECR-0456
ST Albans, VT to Windsor, VT
NECR

Exception Report
Exception Summary Section
9309 Feet before MP 131 to MP 1 - 1474

Page 3
06/08/04
NECR-0456

MP	FT	Profile			Align			Gage			Xlevel			Warp			Limit Class	Posted Class	Track
		TOT Exc	EXC Fl	CL1 Exc	TOT Exc	EXC Fl	CL1 Exc	TOT Exc	EXC Fl	CL1 Exc	TOT Exc	EXC Fl	CL1 Exc	TOT Exc	EXC Fl	CL1 Exc			
56	5326																3	3	5
55	5298																3	3	5
54	5282																3	3	5
53	5276																3	3	5
52	5295																3	3	5
51	5291																3	3	5
50	5362																3	3	5
49	5240																3	3	5
48	5261																3	3	5
47	5299														1	43	1	3	5
46	5302																3	3	5
45	5271																3	3	5
44	5293														1	62		3	5
43	5390																3	3	5
42	10468																3	3	5
40	10586									1	1				1	59	1	3	5
38	5247							7	56	7					1	20		3	5
37	5307							1	7	1							1	3	5
36	10580																3	3	5
34	17684							4	20	4					5	251	2	3	5
31	5300							1	3	1							1	3	5
30	5285							2	41	2							0	3	5
29	1279																3	3	5
999	5291							1	5	1					1	50		3	5
28	5280														1	58		2	5
27	5237							6	45	6					4	247		0	5
26	5278																	3	5
25	5354																	3	5
24	5286							5	50	5					2	117		0	5
23	5277																	3	5
22	2114																	3	5
22	5297														1	57	1	1	5
21	1692																	2	5
21	5235																	3	5
20	5342																	3	5
19	5283																	3	5
18	5283																	3	5
17	8673										4	23	3	1	59	1	1	3	5

000831
000831

NECR-0456

ST Albans, VT to Windsor, VT

NECR

Exception Report

Exception Summary Section

9309 Feet before MP 131 to MP 1 - 1474

Page 4
06/08/04
NECR-0456

MP	FT	Profile			Align			Gage			Xlevel			Warp					Limit Class	Posted Class	Track
		TOT Exc	EXC Fl	CL1 Exc	TOT Exc	EXC Fl	CL1 Exc	TOT Exc	EXC Fl	CL1 Exc	TOT Exc	EXC Fl	CL1 Exc	TOT Exc	EXC Fl	CL1 Exc					
14	5288													3	55	3	1	3	5		
13	5299										1	2		1	59		2	3	5		
12	5270							1	4	1				1	60		1	3	5		
11	5295													1	62		2	3	5		
10	5336																3	3	5		
9	5236																3	3	5		
8	5292							1	11	1							0	3	5		
7	5302																3	3	5		
6	5257																3	3	5		
5	5308																3	3	5		
4	5298																3	3	5		
3	5289																3	3	5		
2	5308																3	3	5		

0 0 0 0 0 0 41 331 41 13 198 8 54 2823 25

Total Miles: 133.9

Exceptions per Mile: 0.81

EXHIBIT 8

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 -----
4 NEW ENGLAND CENTRAL
5 RAILROAD, INC.

COPY

6 Plaintiff,

7 VS.

Civil Action No.
04-30235-MAP

8 SPRINGFIELD TERMINAL RAILWAY
9 COMPANY, ET AL.

10 Defendants.
11 -----

12 D E P O S I T I O N

13 -of-

14 RICK T. BOUCHER

15 Taken on Wednesday, January 10, 2007,
16 at the offices of
17 New England Central Railroad, Inc.
18 St. Albans, Vermont.

19 APPEARANCES:

20 ON BEHALF OF THE PLAINTIFF:

21 RICHARD A. DAVIDSON, JR., ESQ.

22 Flynn & Associates, P.C.

23 400 Crown Colony Drive, Suite 200
24 Quincy, MA 02169

25 ON BEHALF OF THE DEFENDANT:

ROBERT B. CULLIFORD, ESQ.

Senior Vice President and General Counsel

Pan Am Systems

14 Aviation Avenue

Portsmouth, NH 03801

NORMA J. MILLER, RPR

COURT REPORTERS ASSOCIATES

117 BANK STREET

BURLINGTON, VT 05401

(802) 862-4593

Page 6

1 inspection on June 8th, 2004. Are you familiar with
2 that inspection?

3 A. Yes.

4 Q. Now, just so I can keep this straight, were
5 you on the inspection car on June 8th, 2004?

6 A. No, I was not.

7 Q. Okay. Now it's finally clear. Are you aware
8 that the test car inspection of June 8th, 2004,
9 found a defective condition at approximately
10 Milepost 10.16?

11 A. Am I aware of?

12 Q. Pardon me?

13 A. Pardon me, could you repeat the question,
14 please?

15 Q. Sure, well, let me show you something first to
16 show you. This is Lawyer Exhibit 2. You'll see in
17 the upper right-hand corner there's a number 000797.
18 If you could just flip over to where that number is
19 000803. First of all, have you ever seen this
20 document before?

21 A. No, I haven't.

22 Q. You haven't? Okay. Okay, let's try it this
23 way. Prior to June 8th, 2004 -- we can move away
24 from this document for now. Prior to June 8th,
25 2004, were you inspecting as a track inspector for

Page 7

1 New England Central?

2 A. Yes.

3 Q. Were you inspecting the stretch of track
4 between Milepost 11 and Milepost 5?

5 A. Yeah.

6 Q. During the course of your inspections, did you
7 ever note a defect at Milepost 10.16?

8 A. No.

9 Q. You did not? After June 8th, 2004, did anyone
10 inform you that the test car had found a defect in
11 Milepost 10.16?

12 A. Yes.

13 Q. Who informed you of that?

14 A. Supervisor.

15 Q. Do you recall -- would you have been involved
16 at that point in deciding the appropriate remedial
17 action to be taken in response to that defect?

18 A. No.

19 Q. Who would have?

20 A. It was supervisor.

21 Q. And by supervisor, just who are you referring
22 to?

23 A. R.R. Boucher.

24 Q. Okay. Did he ever -- did R.R. Boucher ever
25 communicate to you what remedial action was taken in

Page 8

1 response to discovering this defect?

2 A. Not that I recall, I guess.

3 Q. Okay. But -- and help me here. You were
4 aware that there was a defect at Milepost 10.16
5 after June 8th, 2004?

6 A. Yeah.

7 Q. After June 18th, 2004, when was the next time
8 you inspected the area at or around Milepost 10.16?

9 A. I don't recall.

10 Q. How often were you inspecting the track
11 between Milepost 11 and Milepost --

12 A. Twice a week, under federal regulations. I
13 don't recall dates.

14 Q. Okay. Was it within two days, three days,
15 that day? You don't recall that? Doesn't have to
16 be the specific date, just --

17 A. I don't recall, yeah.

18 Q. Do you recall how many times -- do you recall
19 the first time you inspected -- I don't need to know
20 the date -- or how soon thereafter, when you went
21 out and inspected at Milepost 10.16, did you note
22 the defect then?

23 A. No.

24 Q. You didn't? You knew it existed, but you
25 didn't note --

Page 9

1 A. It was already documented.

2 Q. Yeah, but did you see it? Did you look at it
3 and say, Oh, I see now that that's a defect?

4 A. I believe it was predetermined before I had to
5 inspect it.

6 Q. I understand that, but okay, this is what I'm
7 asking you. Prior to June 8th, 2004, you were
8 inspecting the track?

9 A. Correct.

10 Q. You hadn't noticed a defect --

11 A. No.

12 Q. -- correct?

13 A. No.

14 Q. You were informed that there was a defect
15 there?

16 A. Correct.

17 Q. So when you went out there again and you're at
18 Milepost 10.16, did you note the defect? Did you
19 say, okay, that condition exists?

20 A. Prior to?

21 Q. After you were informed that it existed. You
22 didn't know it existed prior to June 8th?

23 A. Right.

24 Q. You found out on June 8th, or soon thereafter,
25 that it did exist?

Page 10

1 A. Right.
2 Q. Then you're out there inspecting twice a week
3 thereafter, correct?
4 A. Correct.
5 Q. So you get to Milepost 10.16. Did you see the
6 condition? In other words, when you're at Milepost
7 10.16 on your next inspection, did you agree that a
8 defective condition existed, looking at it that day?
9 A. Yes, and it was slowed.
10 Q. That's not what I'm asking. Do you agree with
11 what the FRA test truck found, that a condition
12 known as warp --
13 A. Yes, I agree.
14 Q. Based on your own personal observations, or
15 based on what you were told?
16 A. No, based on the measurements and GPS readings
17 given, that it was gone back and determined that it
18 was in fact there.
19 Q. Who determined that?
20 A. Myself and R.R. Boucher.
21 Q. So you did go out there after the test truck
22 had gone over it?
23 A. Correct.
24 Q. Knowing that the condition existed?
25 A. Yes.

Page 11

1 Q. And you agreed with the determination of the
2 test truck?
3 A. I mean it -- yes.
4 Q. Okay.
5 A. Agreed with the measurements that they'd given
6 us.
7 Q. How did you agree with the measurements? Did
8 you do your own measurements?
9 A. Yes, we did.
10 Q. Okay. So during the period June 8th, 2004, to
11 July 3rd, 2004, you're inspecting twice a week; is
12 that correct?
13 A. That's correct.
14 Q. Did you inspect at Milepost 10.16 twice a
15 week?
16 A. Yes.
17 Q. Did you do any additional measurements between
18 the initial measurement you did to confirm the FRA
19 test car results and July 3rd, 2004?
20 A. The date of -- or I guess I don't recall
21 exactly at what specific time we did the
22 measurements, but I know that we went well north and
23 south of the location through the curve.
24 Q. Yeah?
25 A. The measurements.

Page 12

1 Q. I understand that. You did an initial
2 measurement to confirm the test results, correct?
3 A. Correct.
4 Q. What I'm asking you is were there any
5 subsequent measurements of the condition at Milepost
6 10.16 between your initial measurement and July 3rd,
7 2004, I guess I don't understand your question.
8 Q. Pardon me?
9 A. I guess I don't understand your question.
10 Q. You performed one measurement, if I understand
11 what you're saying, soon after the test truck went
12 over the line?
13 A. That's correct, yeah.
14 Q. All's I'm asking is did you do another
15 measurement after the initial one? We've got one in
16 the book.
17 A. Yeah.
18 Q. Did you ever do another measurement between
19 that initial measurement and July 3rd, 2004?
20 A. Not that I can recall, I guess, no.
21 Q. Do you recall going out there at your
22 twice-weekly inspections and noticing that the
23 condition remained the same, or was it worsening or
24 was it getting better?
25 A. To my knowledge, it remained the same.

Page 13

1 Q. Okay, did you notice that the track at
2 Milepost 10.16 was also out of alignment?
3 A. No.
4 Q. Okay. Did you notice a condition such as a
5 low joint where the joint on the low-end side was
6 sinking in the mud or the ballast was foul?
7 A. I don't recall.
8 Q. Okay, and seeing as how this condition existed
9 pretty close to a crossing, do you, as a normal
10 course of practice, sort of use a heightened sense
11 of an investigation at or near public grade
12 crossings?
13 A. Public grade or --
14 Q. Public at-grade crossings, yes, or private.
15 A. Yes.
16 Q. What more would you do at or near a public or
17 private at-grade crossing that you wouldn't do, say,
18 in the middle of nowhere?
19 A. Well, no, I feel I do an adequate job of the
20 entire lines.
21 Q. I understand that, and I'm glad you do.
22 A. I guess you say I stop for each crossing. I
23 guess other than that.
24 Q. What do you do when you stop at each crossing,
25 would probably be a good question.

Page 14

1 A. As I do with the entire track, is visually
2 inspect the rail.
3 Q. Okay, of the actual rails in the road or the
4 area leading into the crossing?
5 A. As much as I can see.
6 Q. Well, what determines how much you can see?
7 A. I guess how wide my eyes are open.
8 Q. Okay, so you should be able to see everything,
9 I'm assuming.
10 A. Yeah. I mean --
11 Q. Yeah, okay. Were you involved with the
12 response to the derailment, the repair of the track,
13 subsequent to July 3rd, 2004?
14 A. No.
15 Q. No? Did you go out and inspect the track when
16 the repair was completed?
17 A. Yes.
18 Q. Okay. Was part of your -- I think you
19 answered this. Part of your territory included
20 where the train actually came off the tracks,
21 correct, where they were on their side?
22 A. Yeah.
23 Q. Was that area -- Prior to July 3rd, 2004, was
24 that area jointed rail or welded rail?
25 A. Prior -- it's jointed high side and welded on

Page 15

1 the low, I believe.
2 Q. Okay.
3 A. And it's been that way as long as I --
4 Q. Do you recall if that area today is now welded
5 rail on both sides?
6 A. No, it is not.
7 Q. It's not. Do you recall, as a result of this
8 derailment, welded rail being put in anywhere along
9 that stretch of track? You don't?
10 A. No.
11 Q. Okay.
12 A. Prior to this derailment?
13 Q. Post.
14 A. I mean there is welded rail, so it had to have
15 been put in sometime.
16 Q. Right, but since July 3rd, 2004?
17 A. Prior to?
18 Q. Post, after July 3rd, 2004, there was a
19 derailment?
20 A. No. After?
21 Q. Yes.
22 A. No rail that I know of.
23 Q. Okay. Do you recall what the condition of the
24 ties were between Milepost 5 and Milepost 11 prior
25 to July 3rd, 2004?

Page 16

1 A. I would say good.
2 Q. All of them?
3 A. Yes.
4 Q. Do you know how old those ties were?
5 A. No.
6 Q. Do you know when the last time a tie job had
7 been through that?
8 A. From what I believe, ten years, I guess.
9 Within the last ten.
10 Q. Do you know, as a matter of course, what the
11 average life of a tie is?
12 A. No. It varies. I mean --
13 Q. Okay. On what basis do you state that the
14 last tie job was probably ten years ago?
15 A. I can't recall the dates.
16 Q. Yeah, but you seem to believe that the last
17 tie job was ten years?
18 A. Within that.
19 Q. On what facts do you form that belief? Were
20 you told that?
21 A. Yes. Told.
22 Q. Who told you that?
23 A. Supervisor.
24 Q. R.R. Boucher?
25 A. That's correct.

Page 17

1 Q. Did you participate in preparing any cost
2 estimates or scopes of work relating to the repair
3 of the rail line after the derailment?
4 A. The only thing I participated in was driving
5 high-rail truck while the contractor was videotaping
6 or camcorder.
7 Q. Right, okay. Did you discuss costs?
8 A. No.
9 Q. Did you discuss budgets?
10 A. No.
11 Q. Work plans? While you were out there, you
12 didn't say we'll do X, Y, and Z here?
13 A. No. No. Was just driving the truck.
14 Q. Did you film it?
15 A. I was driving the truck, and he was filming.
16 That was it. There was no discussion.
17 Q. Do you participate in determining the cause of
18 derailments in -- let me put it to you this way. Do
19 you participate in investigations into the cause of
20 derailments?
21 A. Yeah.
22 Q. Did you participate in an investigation into
23 the cause of the derailment on July 3rd, 2004?
24 A. Yes, I did. Assisted Mike Lawyer in taking
25 measurements.

Page 18

1 Q. Do you recall what the cause of the derailment
2 on July 3rd, 2004, was?

3 A. No.

4 Q. Okay, did I hear you correctly, though, you
5 did participate in the investigation?

6 A. Yes.

7 Q. And then what did you do, hand your findings
8 off to someone else?

9 A. I believe B and M was right there writing down
10 the track measurements as we were.

11 Q. But I'm not asking about B and M. I'm asking
12 about you and/or New England Central investigating
13 the derailment and determining the cause?

14 A. I didn't have anything to do with determining
15 the cause, other than assisting and taking track
16 measurements with the roadmaster.

17 Q. And who was the roadmaster?

18 A. Mike Lawyer.

19 Q. Okay. Do you have those measurements?

20 A. No, I do not.

21 Q. Okay. Do you know who does have them?

22 A. Well, other than B and M, Mike Lawyer.

23 Q. Okay, good. Did you participate in any -- in
24 preparing any budgets or cost estimates for either
25 the damage caused -- well, let's take that first

Page 19

1 question, is did you participate in any cost
2 estimates for the damage caused by the derailment to
3 the New England Central's line?

4 A. No.

5 Q. Did you participate in any budgets or cost
6 estimates for work to be done --

7 A. No.

8 Q. -- on the line?

9 A. No.

10 Q. Do you know who would have done that work?

11 A. I imagine the contractor, Mike Lawyer.

12 Q. Okay. If I could just ask you to look at one
13 thing, which is Lawyer Exhibit 3. Are you familiar
14 with that document, sir?

15 A. Yes.

16 Q. Could you identify it?

17 A. RailAmerica Engineering Standards and
18 Policies.

19 Q. Could you describe the purpose of that
20 document, to the best of your knowledge?

21 A. It's a guidelines, policies that we have to
22 follow.

23 Q. Guidelines for what?

24 A. For the railroad.

25 Q. For?

Page 20

1 A. For the line in which we inspect.

2 Q. Okay. Is that what you're saying?

3 A. Yeah, policies and standards.

4 Q. If I could just ask you to turn to -- and this
5 is difficult because there are no numbers, but it's
6 noted as 001044 would be the number -- it's a track
7 inspection report. Are you familiar with this
8 document, sir?

9 A. No.

10 Q. No? Okay. Does New England Central use a
11 different track inspection report form?

12 A. Yes, they do.

13 Q. Does the New England Central's track
14 inspection report contain all of the information
15 requested here?

16 A. Yes, to my knowledge.

17 Q. Do the New England Central track inspection
18 reports which you --

19 A. Other than I guess other than -- yeah, to my
20 knowledge.

21 Q. Do they contain a section to describe the
22 exception or condition on the track noted?

23 A. Yes.

24 Q. Do they contain a section to identify the
25 remedial action taken in response to the

Page 21

1 description?

2 A. Yes. Under "remarks."

3 Q. Pardon?

4 A. Remarks.

5 Q. So when you're out there, what you're saying
6 is that you have a form, and if you see a defect,
7 you note it on the form?

8 A. Correct.

9 Q. Even if that's a continuing defect, would you
10 still do that?

11 A. Not required. That I --

12 Q. Okay, you note the defect on the first day you
13 see it; is that correct?

14 A. Correct.

15 Q. And then do you note what remedial action will
16 be taken, or do you fix it that day?

17 A. If we're able to fix it.

18 Q. But if you're not able to, do you note a date
19 by which the remedial action will be taken?

20 A. They're given 30 days.

21 Q. Okay. So this is what I'm trying to get to,
22 and I don't want to confuse anybody, but you go out
23 there, you see a defect, you note it, and you know
24 you have 30 days to fix it, correct? So when you go
25 out there the next time on your track inspection

Page 22

1 report, do you note the defect again?
2 A. Not within 30 days.
3 Q. Okay. Okay. On your track inspection
4 reports, did you note the defect at Milepost 10.16
5 once you were aware of it?
6 A. Not that I recall.
7 Q. Why not?
8 A. It was already documented from the geometry
9 car.
10 Q. But it wasn't documented by you, was it?
11 A. No.
12 Q. It was never documented by you?
13 A. No.
14 Q. And you'd never seen that inspection report,
15 correct?
16 A. This particular one?
17 Q. I apologize. We'll go back to Lawyer Exhibit
18 2. Had you ever seen this document, sir?
19 A. No.
20 Q. So you never saw any documentation that noted
21 the defect at Milepost 10.16?
22 A. General DOB.
23 Q. You saw what?
24 A. Daily operating bulletin.
25 Q. But you never saw anything generated by the

Page 23

1 Track Inspection Department noting the defect?
2 A. The --
3 Q. And when the remedial action will be taken?
4 MR. DAVIDSON: All right, answer the
5 question.
6 A. Daily track bulletin gives the slow order.
7 It's a required document to have every day.
8 Q. But you're the track inspector who's supposed
9 to do an inspection and note defects, correct, on
10 your track inspection?
11 A. Found by myself.
12 Q. Well, you went out and looked at the spot and
13 agreed that it was a defect, correct?
14 A. Correct.
15 Q. But you never noted. It you just kind of
16 relied on what others were doing; is that correct?
17 MR. DAVIDSON: I don't think that's a
18 fair characterization of his testimony in the
19 slightest.
20 MR. CULLIFORD: I'm asking if it's
21 correct. I'm not characterizing the testimony. I'm
22 just asking if it's correct.
23 MR. DAVIDSON: Well, the tone and
24 tenor of your last series of questioning says the
25 opposite. He's testified --

Page 24

1 MR. CULLIFORD: You're not going -- My
2 tone and tenor will not be reflected on the record,
3 but --
4 MR. DAVIDSON: He's testified that
5 they went out right after they got the report and
6 verified that the track was, in fact, defective, so
7 he confirmed it on his own with his supervisor, and
8 then he noted it in the daily operating bulletin.
9 He saw it there; there's no reason -- He's testified
10 there's no reason to further note it in his reports,
11 but he sees it every day on the restrictions, still.
12 That's what he's testified to, and you're turning it
13 around somehow.
14 MR. CULLIFORD: I'm not turning it
15 around. I'm simply asking this.
16 MR. DAVIDSON: I'm misunderstanding
17 what you're saying; it sounds like he's
18 misunderstanding what you're saying, as well.
19 MR. CULLIFORD: I'm not trying to be
20 argumentative. I apologize.
21 MR. DAVIDSON: You're not. I'm just
22 telling you it's not clear.
23 BY MR. CULLIFORD:
24 Q. Are you aware of whether FRA requires the
25 information contained on this track inspection

Page 25

1 report? In other words, this is what I'm trying to
2 get to, and we'll leave your report alone for a
3 minute, but the track inspection report would
4 contain all of this information. Are you aware of
5 whether this is required by the FRA track safety
6 standards?
7 A. Yes, it is.
8 Q. Okay, and now presuming for the moment that
9 your track inspection safety reports have the same
10 thing, alls I'm asking is did you note anywhere for
11 the purposes of your records -- wait. Are you
12 required to maintain your track inspection reports
13 for a certain period of time by the FRA?
14 A. Yes. One year.
15 Q. For the purposes of your own records that FRA
16 requires you to keep and the information required to
17 be in them, did you note this defect in your track
18 inspection reports?
19 A. Not that I recall.
20 Q. Okay, if I could just refer you one more time
21 back to Lawyer Exhibit 2. Okay? Does this seem --
22 this is basically a seven-page document noting
23 conditions and defects. Does this seem like a lot
24 of defects to you for a rail line of the size of New
25 England Central or a rail line that was tested? I'm

EXHIBIT 9

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 -----
4 NEW ENGLAND CENTRAL
5 RAILROAD, INC.

COPY

6 Plaintiff,

7 VS.

Civil Action No.
04-30235-MAP

8 SPRINGFIELD TERMINAL RAILWAY
9 COMPANY, ET AL.

10 Defendants.
11 -----

12 D E P O S I T I O N

13 -of-

14 MICHAEL LAWYER

15 Taken on Tuesday, January 9, 2007,
16 at the offices of
17 New England Central Railroad, Inc.
18 St. Albans, Vermont.

19 APPEARANCES:

20 ON BEHALF OF THE PLAINTIFF:

21 RICHARD A. DAVIDSON, JR., ESQ.
22 Flynn & Associates, P.C.

23 400 Crown Colony Drive, Suite 200
24 Quincy, MA 02169

25 ON BEHALF OF THE DEFENDANT:

ROBERT B. CULLIFORD, ESQ.

Senior Vice President and General Counsel
Pan Am Systems

14 Aviation Avenue
Portsmouth, NH 03801

NORMA J. MILLER, RPR

COURT REPORTERS ASSOCIATES

117 BANK STREET

BURLINGTON, VT 05401

(802) 862-4593

Page 18

1 Q. Well, how did you know that the slow order or
2 the speed would be reduced in response to that if
3 the decision was made -- in other words, what I
4 think you testified to and this is why I need your
5 help, is that the decision to reduce the speed on
6 this section of line was made while on the test car.
7 Did -- was that conveyed to you by Mr. Boucher on
8 the test car?

9 A. Our practice while on the test car is that
10 when a condition exists or pops up from the test
11 that needs the speed limited due to a defect, we
12 reduce the speed first, immediately after we go over
13 it, or before the track is given up behind the car,
14 and then verify it in the field in the subsequent
15 days, as soon as possible.

16 Q. So when you were on the test car, there was no
17 conversation between you and Richard Boucher saying,
18 "I'm going to drop the speed"?

19 A. Not specifically.

20 Q. But you, based on -- I'm sorry?

21 A. It's a given practice.

22 Q. So you assume that that was the remedial
23 action taken that day?

24 A. Yes.

25 Q. So did you ever go back to confirm that that

Page 19

1 remedial action was taken?

2 A. It should have been placed on a temporary Form
3 C bulletin, and then translated over to our daily
4 operating bulletin in the subsequent days. That
5 should be traceable.

6 Q. Okay, and it would remain on that bulletin
7 until it was corrected?

8 A. Yes.

9 Q. Do you know how this condition of warp or warp
10 62 could affect train operations?

11 A. As opposed -- are you talking about the track
12 speed could affect it, or what --

13 Q. No, the train going -- you identified -- could
14 you repeat your definition of what warp is?

15 A. It's a difference in cross level in a 62-foot
16 segment of track.

17 Q. What does that mean to a layman?

18 A. One rail is higher than another, or the --
19 Excuse me while I figure out the best way to explain
20 it. When you look at the two rails in proportion to
21 each one, one is higher than the other in some
22 cases, as it would be in a curve. A warp would be
23 that it changes too drastically in a 62-foot
24 segment.

25 Q. Okay, so this drastic change, does that

Page 20

1 affect, at whatever speed, how a train would operate
2 over that segment of track?

3 A. It would affect it in rocking, mostly.

4 Q. What do you mean by rock?

5 A. The rail car could rock if there is too much
6 of a change in a certain distance at a certain
7 speed.

8 Q. What would that certain speed be, do you know?

9 A. That's too general. I -- specifically I
10 couldn't tell you what speed would cause what amount
11 of rock. It's based on several factors. There's
12 the car loading. There's no given amount that a car
13 rocks for a certain defect. It's car loading,
14 center of gravity, all that would take into
15 consideration.

16 Q. Do you know if FRA publishes any guidelines or
17 regulations regarding when rock would occur?

18 A. Not when rock would occur. They have
19 guidelines that tell you the maximum allowable,
20 which is what this is referring to, this report from
21 the exception list there. There is a table in the
22 CFR that tells you what the maximum allowable change
23 in a 62-foot segment of track is for each section of
24 track.

25 Q. Correct, but the FRA does publish guidelines

Page 21

1 to some extent?

2 A. Outside of the regulation, I'm not aware of a
3 guideline.

4 Q. Okay. So you're not aware of a theory, let's
5 call it for now, that rock would be more likely to
6 occur under these conditions at a slower speed?

7 A. A theory, no. I'm familiar with the
8 regulation only.

9 Q. Do the regulations say that rock would -- the
10 slower the speed, the more likely rock would occur?

11 A. No, it doesn't speak to rock. It -- you asked
12 what a car would do if it gave -- if it was
13 subjected to this condition.

14 Q. Yeah.

15 A. And I told you it would rock. That's why
16 there's a restriction placed on it, but I don't know
17 of any guidance from the FRA that tells you this
18 specifically.

19 Q. Would anyone from New England Central be aware
20 of that?

21 A. Not to my knowledge.

22 Q. Are you familiar with the term, "wheel lift"?

23 A. Yes.

24 Q. Could you describe what that refers to -- in
25 to your knowledge in the railroad industry,

Page 22

1 obviously?

2 A. Wheel lift would typically be the flange of
3 the wheel is allowed to come up onto the rail, or
4 partially onto the rail head, as opposed to riding
5 on the gauged side of the rail, and it's usually an
6 imbalance that causes it.

7 Q. What do you mean by an imbalance?

8 A. Something causes the other side of the car to
9 go down, so the wheel lifts on the opposite -- it
10 rocks.

11 Q. So if one side of the rail is higher than the
12 other, could that cause wheel lift?

13 A. That's kind of general. In a curve, it's
14 standard to have one side higher than another.

15 Q. If one side is higher than the other, so as to
16 result in the warp condition, could that cause wheel
17 lift?

18 A. Please repeat that. You lost me.

19 Q. Okay, I understand that one rail can be higher
20 than the other, but if one rail -- if that -- that's
21 fine, but at the same time, if one rail is higher
22 than the other and a condition of warp is created,
23 correct?

24 A. Yes.

25 Q. Could that condition of warp in that instance

Page 23

1 cause wheel lift?

2 A. You're asking me to speak to something that
3 I'm not an expert on.

4 Q. I'm asking -- I'm just asking you for your
5 position.

6 A. I can't say what degree of lift would be
7 caused by what condition of track. All I know is
8 that the CFR and the Federal Railroad Administration
9 give a list of criteria that are safe for certain
10 standards of track, and that's what we go by.

11 Q. Okay, other than dropping the speed on the
12 line to the next class, what other remedial options
13 were available, if any?

14 A. Repair the condition.

15 Q. Was that considered?

16 A. Yes.

17 Q. Okay. When was that option considered?

18 A. It's considered immediately after the test,
19 but we repair them not necessarily in the order they
20 were found, but on a basis of when we can fix each
21 individual one. Our machines may not have been in
22 the area at the time, so we were most likely fixing
23 other ones, but not that one at that given point.

24 Q. At what given point?

25 A. Well, right after the test.

Page 24

1 Q. Okay. What about in the period between June
2 8th, 2004, and July 3rd, 2004?

3 A. We had not done work on that specific defect.
4 We had been doing work on other ones.

5 Q. Why would you not elect to perform work at
6 this location on this defect in the period June 8,
7 2004, to July 3rd, 2004?

8 A. It wasn't that we had not elected to. We
9 hadn't got to it yet.

10 Q. So you gave priority to repairing other
11 defects over repairing this defect; is that a
12 correct statement?

13 A. I don't know as it was on a prioritization
14 basis, just necessarily first come-first served, or
15 what we came across first.

16 Q. So if one defect was worse than another, that
17 wouldn't enter into your thinking as to when you
18 address it?

19 A. It would be based on the condition that
20 existed and how it would be prioritized, but they
21 were -- if they were something we could provide
22 remedial action by slow-ordering the track, we did.

23 Q. Okay, was it you were addressing the defects
24 on a first-come-first-serve basis, or addressing
25 defects based on a prioritization?

Page 25

1 A. There's two levels of defect in my mind that
2 we look at. One that shows a Class 0, which needs
3 to be addressed immediately. That it is not
4 necessarily safe for operations. Those are the
5 first. Those are prioritized. We have to do those
6 first. And then after that, it becomes a basis of
7 when we can get the machine to them. Usually we do
8 them in order, first come, first serve. If there's
9 a larger problem that is going to take more time and
10 effort, we may jump over that and prioritize in that
11 respect. There's not a great deal of thought that
12 goes into let's fix these, if we had 50 defects,
13 let's fix them in this order, 1, 2, 3, all the way
14 up to 50 -- that's not the case. There are some
15 that require immediate attention, other ones that we
16 can do in a first-come-first-serve basis.

17 Q. Could you take a look at Lawyer Exhibit 2
18 again, which is the test results?

19 A. Okay.

20 Q. Could you go through here and identify for me,
21 anyway, what some of the more significant defects
22 would be?

23 A. As far as prioritization?

24 Q. Yes.

25 A. The first page would be marked in the third

Page 26

1 column as 120.99. It's a cross level defect.

2 Q. And what type of defect is a cross level
3 defect?

4 A. It's a the maximum allowable, and this is in
5 tangent track, cannot be more than three inches.
6 This is 3.31.

7 Q. Does that have any relation at all to a warp
8 condition?

9 A. No, they're two different defects. They're
10 both with regard to geometry of track, but --

11 Q. And why would you consider that to be a more
12 significant defect than a warp condition?

13 A. Because the limiting class was 0, meaning that
14 it needed to be resolved before we could send
15 another train over it.

16 Q. Okay, whether trains could operate over the
17 line -- Was your main consideration keeping trains
18 running when you decided which defects to address?

19 A. Yes.

20 Q. And that consideration was driven by basically
21 the track class that was identified by the test
22 truck? What I'm trying to get at is on these test
23 results, wherever there's a limiting class of zero,
24 a train could not operate over that segment of track
25 until the defect was corrected; is that a true

Page 27

1 statement?

2 A. Yes.

3 Q. So what causes -- I guess what I'm trying to
4 get to is what causes a limiting class of zero
5 versus a limiting class, say, of 2?

6 A. With respect to cause, it would depend upon
7 the defect.

8 Q. In other words, does a more severe defect lead
9 to a lower limiting class, is I guess basically what
10 I'm asking.

11 A. Yes.

12 Q. And during the period June 8th to July 3rd,
13 2004, were all of the areas identified by a limiting
14 class of zero addressed by New England Central?

15 A. Yes.

16 Q. Was that basically done right after June 8th,
17 2004?

18 A. As I recall, everything was dealt with on June
19 8th that was found on June 8th with respect to
20 zeroes.

21 Q. Then what's the next -- what would the next
22 category of defects be for remedial action? You've
23 taken care of the limiting class zero. What was
24 your plan -- or New England Central's plan, for that
25 matter -- to address the additional defects on this

Page 28

1 report?

2 A. It would be dependent upon the type of defect
3 and what the repair would be. For instance, if it
4 was a short gauge defect that didn't involve our
5 tamper and regulator to travel to it, we could take
6 a truck with a couple guys in it and repair the
7 defect. So that was based, I guess, upon what the
8 repair would be and the magnitude of it. If it was
9 a geometry condition or a surface condition that
10 would require the tamper to do work on it, we would
11 wait for the tamper to get to that point, because
12 it's not cost-effective to travel it up and down the
13 track. You travel it in one direction and hit every
14 defect as you come to it, first-come, first-served.

15 Q. And where did the -- okay, so for any of the
16 limiting Class 3 defects were tampers and
17 regulators --

18 A. I don't recall specifically.

19 Q. Would a tamper or a regulator be necessary to
20 rectify a condition identified as cross level?

21 A. Not necessarily.

22 Q. Could you flesh that out a bit?

23 A. You could do it by hand. Meaning -- well,
24 there's a couple different alternatives. Jacking
25 the track with track jacks and tamping with a

Page 29

1 tamping stick to get the stone underneath the ties
2 could be done. It's a more labor-intensive and
3 time-consuming deal, but in this event, if we had a
4 zero, we would have done that if the tamper wasn't
5 close by.

6 Q. Could that method have been used at Milepost
7 10.16, as well?

8 A. Could have been, yeah.

9 Q. So it's safe to say that after June 8th, you
10 and/or NECR came up with a plan to address the
11 defects noted on Lawyer Exhibit 2, correct?

12 A. Yes.

13 Q. Who was involved in those discussions?

14 A. It would have been myself and Richard Boucher.

15 Q. Anyone else?

16 A. Possibly Joe Spirk, the chief engineer.

17 Q. What about Charles Moore?

18 A. He would have probably not been terribly
19 involved in the decision on how to address them.

20 Q. How many discussions do you think you had with
21 Mr. Boucher regarding a plan to address these
22 defects?

23 A. It would be hard to say. We speak daily,
24 discuss status.

25 Q. Would he ever submit anything in writing to

Page 30

1 you?

2 A. No.

3 Q. Why not?

4 A. There was no need. We talk daily.

5 Q. Was it NECR's plan to fund these remedial
6 actions in response to the defects noted on the plan
7 from NECR funds, or were you seeking any sort of
8 public, state, federal funding to perform this work?

9 A. No. NECR funds would have been used.

10 Q. Does NECR receive much public funding for
11 maintenance and/or capital work on the line?

12 A. Very little.

13 Q. Does Amtrak pay NECR a trackage rights fee or
14 a fee to utilize the track?

15 A. Yes.

16 Q. Is part of that fee aimed towards maintenance
17 of the track?

18 A. Yes.

19 Q. Would that be public funding?

20 A. I guess that would revert back to what the
21 Amtrak structure is. I don't know if I could speak
22 to that.

23 Q. How much annually, on average, does NECR
24 receive from Amtrak?

25 MR. DAVIDSON: Objection. He's not

Page 31

1 identified to speak to those issues. There are
2 people in the company --

3 MR. CULLIFORD: Okay, good point.

4 MR. DAVIDSON: -- more qualified than
5 Mr. Lawyer to answer those questions. And if you
6 want to go down that road, we can schedule someone
7 else to be in here to talk about the Amtrak issues,
8 in terms of funding, accounts, and all that other
9 kind of fun stuff.

10 MR. CULLIFORD: Let me check one
11 thing. I see what you're saying, though.

12 MR. DAVIDSON: I believe that would be
13 Tammy Campbell, correct?

14 THE WITNESS: Probably.

15 MR. CULLIFORD: Well, let me ask you
16 this, then. We seem to be making good progress.
17 There's going to be one or two questions hopefully
18 about the performance pay.

19 MR. DAVIDSON: That's outside the
20 scope of your work, right? Amtrak, the payments?

21 THE WITNESS: Yeah, I don't get
22 involved with billing and --

23 MR. CULLIFORD: What I'm trying to get
24 to is should we keep going down this road, and then
25 at the end maybe talk to somebody else?

Page 32

1 MR. DAVIDSON: About Amtrak issues and
2 Amtrak payments and funding and all that, yeah, it
3 would be someone else.

4 MR. CULLIFORD: That's fine. So we'll
5 finish up here, and then we'll come back. Okay.

6 BY MR. CULLIFORD:

7 Q. To the best of your knowledge, or the best of
8 New England Central's knowledge, can a warp
9 condition identified at Milepost 10.16 cause a
10 derailment?

11 A. Could you restate that question?

12 Q. Let me put it to you this way: Is another
13 term for a warp condition super elevation?

14 A. No, not necessarily.

15 Q. Okay. Has New England Central, or have you
16 personally, identified the cause of this derailment?

17 A. I have not personally, no.

18 Q. Do you know if New England Central has or --

19 A. I don't know if we determined the cause.

20 Q. Do you know who on behalf of New England
21 Central is required to identify the cause of a
22 derailment, either for reporting to FRA or for
23 internal use?

24 A. Generally, all of the departments feed
25 information to the general manager, who determines

Page 33

1 the cause based on that. It's a combined effort.

2 Q. On July 3rd, 2004, who was the general
3 manager?

4 A. It was vacant, and Regional Vice President
5 Charles Moore was assuming those roles.

6 Q. Do you know if Mr. Moore made a determination
7 as to the cause of this derailment?

8 A. I'm not aware of one.

9 Q. I'd like to show you another document if I
10 could, sir. We're done with the report for now.
11 Are you familiar with this document, sir?

12 A. Yes, I am.

13 Q. Would you identify what it is?

14 A. RailAmerica Engineering Standards and
15 Policies.

16 Q. And could you describe the relationship
17 between New England Central and RailAmerica?

18 A. RailAmerica is the holding company that owns
19 New England Central.

20 Q. Okay. Are these standards and policies
21 intended -- Is New England Central required to
22 perform its operations in compliance with these
23 standards and policies?

24 A. Required as a standard? It's something we
25 should follow. Policies are more of a requirement.

EXHIBIT 10

NEW ENGLAND CENTRAL RAILROAD CO. DAILY OPERATING BULLETIN NO. 1623
EFFECTIVE AT 0001 HOURS JUNE 10, 2004

(Void at 0001 JUNE 11, 2004 unless extended by Train Dispatcher)

001395
TRANS. RULE OF THE WEEK: T-2 CROSSING THROUGH RAIL EQUIPMENT
MECHANICAL RULE OF THE WEEK: VEHICLES, EQUIPMENT, AND TOOLS
MOW RULE OF THE WEEK: 100.4 ON-TRACK SAFETY PROCEDURES
All Subdivisions

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	1	LATEST SUPERINTENDENTS NOTICE NO. 03-06			LATEST GENERAL ORDER NO.04-13			
	2	WEEKEND DUTY OFFICER NORTHERN DIVISION STEVE LARRO 6/10 AND 6/11						
	3	ALL CREWS MUST BE ON THE LOOKOUT FOR SUSPICIOUS PERSONS ON OR ABOUT RAILROAD PROPERTY. CREWS ARE INSTRUCTED TO REPORT THESE INSTANCES TO THE ARDC & TO LOCAL AUTHORITIES AS NECESSARY.						

Palmer Subdivision

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	4	A 1.4 - 2.25	10 MPH			NO FLAGS		DED 08-13-03 TIE
	5	A 3.9	10 MPH			NO FLAGS		DED 03-10-04 TIE
	6	A 5.3 - 5.5	10 MPH			NO FLAGS		DED 06-05-02 TIE
	7	A 6.2	10 MPH			NO FLAGS		DED 04-18-02 SRF
	8	C <u>THAMESVILLE SIDING</u> OOS BETWEEN MP12.4 AND MP12.5						DED 04-22-04 GAUG
	9	A 14.15	10 MPH (NORWICH TUNNEL)			NO FLAGS		MJP 09-05-03 WATER
	10	A 16.8	10 MPH (BRIDGE)			NO FLAGS		DED 05-25-04 BT
	11	A 18.54	10 MPH			NO FLAGS		DED 03-10-04 FROG
	12	A 23.07	10 MPH			NO FLAGS		DED 04-13-04 SRF
	13	A 25.26 - 25.36	25 MPH			NO FLAGS		DWW 05-07-04
	14	A 26.03	25 MPH			NO FLAGS		DED 10-22-03 SRF
	15	A 27.5 - 27.9	25 MPH			NO FLAGS		DED 05-26-04 TIES
	16	C 29.99	TRACK 852 AIRLINE TRACK OOS					DED 04-24-03
	17	A 35.9	25 MPH			NO FLAGS		DED 08-26-03 TIE
	18	A 38.65	25 MPH			NO FLAGS		
	19	A 39.6 - 39.65	25 MPH			NO FLAGS		DED 03-31-04 TIE
	20	A 40.95	25 MPH			NO FLAGS		DED 02-27-04 SRF
	21	A 42.75 - 42.8	25 MPH			NO FLAGS		DED 03-30-04 TIE
	22	A 46.45 - 46.60	10 MPH			NO FLAGS		DED 03-18-03-TIE
	23	C <u>STATE LINE</u>	SIDING OOS SOUTH OF MP 55					DED 05-27-04 TIES
	24	A 55.9	10 MPH			NO FLAGS		DED-04-13-04-SRF
	25	A 59.54	25 MPH (BRIDGE)			NO FLAGS		DED-03-26-04-SRF
	26	A 60.8	10 MPH			NO FLAGS		DED 03-26-04-SRF
	27	A 62.31	25 MPH			NO FLAGS		JSV 05-20-04

ARDC

001396

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	28	C PALMER YARD	SOUTH CROSSOVER TRACK 780 TO MAIN TRACK OOS					DWW 04-12-02
	29	C PALMER YARD	TRACK 789 FROM RED FLAG TO A POINT 300 FEET NORTH OOS					
	30	A 65.2 - 65.25	10 MPH			NO FLAGS		DED 05-27-04 GAUG
	31	C BARRETTS	TRACK 758 M-1 DNE 5MPH					DWW 12-02-03
	32	A 69.45 - 69.75	25 FRT 30 PSGR			NO FLAGS		DED 11-06-02 TIE
	33	A 72.67	25 FRT 30 PSGR (CULVERT)			NO FLAGS		DED 05-07-04 CVT
	34	A 75.54	25 FRT 30 PSGR			NO FLAGS		DED 06-07-04 RAIL
	35	A 75.6	30 MPH			NO FLAGS		DED 04-29-04 RAIL
	36	A 77.05	10 MPH			NO FLAGS		DED 06-07-04 RAIL
	37	A 79.50 - 79.75	25 FRT 30 PSGR			NO FLAGS		DED 06-03-04 TIES
	38	A 83.14	25 FRT 30 PSGR			NO FLAGS		DED 02-11-04 SRF
	39	A 84.6	25 FRT 30 PSGR			NO FLAGS		DED 06-04-04 TIES
	40	C 84.99	SOUTH END AMHERST SIDING OOS FOR 400 FEET					DED 08-15-03 TIE
	41	A 87.15	50 MPH			NO FLAGS		TJM 09-17-02 SPERRY
	42	C 87.94	25 FRT 30 PSGR			NO FLAGS		DED 05-14-04 SRF
	43	A 87.99	50 MPH			NO FLAGS		DED 09-08-02 SPERRY
	44	A 88.15 - 88.2	10 FRT 15 PSGR			NO FLAGS		DED 05-21-04 SRF
	45	A 91.5	25 FRT 30 PSGR (CROSSING)			NO FLAGS		DED 05-21-04 SRF
	46	A 97.2	25 FRT 30 PSGR			NO FLAGS		DED 03-05-04 SRF
	47	A 98.58	10 MPH (BRIDGE)			NO FLAGS		DED 07-13-03 BRG
	48	A 99.68	10 FRT 15 PSGR			NO FLAGS		DED 06-01-04 SRF
	49	A 102.45	25 FRT 30 PSGR (BRIDGE)			NO FLAGS		DED 04-02-04 SRF
	50	A 103.1 - 103.21	10 FRT 15 PSGR			NO FLAGS		DED 03-05-04 SRF
	51	A 111.6 - 111.80	10 MPH			NO FLAGS		TJM 05-26-04 TIES
	52	A 113.2 - 113.6	25 FRT 30 PSGR			NO FLAGS		RTB 04-14-04 TIES
	53	A 115.93	25 MPH			NO FLAGS		JRS 09-02-03 RAIL
	54	C 116.0	HOT BOX DETECTOR IN SERVICE TRAINS TO MONITOR CHANNEL 1					
	55	A 117.0 - 117.05	10 FRT 15 PSGR			NO FLAGS		RTB 04-14-04 SRF MUD
	56	A 118.7 - 119.0	25 FRT 30 PSGR			NO FLAGS		RTB 04-12-04 MUD
	57	C BRATTLEBORO	NORTH END OF TRACK 634, 635 AND 636 OOS TO CEMENT DOCK					JRS 03-24-04
	58	A 121.25	10 MPH			NO FLAGS		RTB 04-14-04 RAIL
	59	B 123.0 - 123.7	YELLOW / RED FLAGS AT MP 122.18 AND MP 124.70				STOP	WFA 06-09-04
	60	A 123.4	25 FRT 30 PSGR					WFA-06-07-04

ARDC
001397

Void	Items	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	61	C 123.4	TEMPORARY CROSSING ONLY IN USE WITH FORM B PROTECTION					WFA 05-07-04
	62	A 135.75	10 FRT 15 PSGR			NO FLAGS		RTB 11-10-03-SRF BS
	63	A 141.2	10 FRT 15 PSGR			NO FLAGS		RTB-04-21-04-SRF
VAD 18/15/04	64	A 148.75 - 148.8	25 FRT 30 PSGR			NO FLAGS		MJP 06-09-04 MS
	65	A 149.5 - 149.6	25 FRT 30 PSGR			NO FLAGS		RWB 11-04-03 CVT
	66	A 151.05 - 151.57	10 FRT 15 PSGR			NO FLAGS		MJP 06-09-04
	67	A 155.65	10 FRT 15 PSGR			NO FLAGS		RTB-05-26-04-TIE
VAD 18/16/04	68	A 160.0	10 MPH			NO FLAGS		MJP 06-09-04 RWB 11-14-03 ROK
	69	A 162.05	25 FRT 30 PSGR			NO FLAGS		DED 10-01-01 SPERY
	70	A 162.10 - 163.0	50 MPH			NO FLAGS		12-20-03
	71	C 166.4	HOT BOX DETECTOR IN SERVICE TRAINS TO MONITOR CHANNEL 1					MJP 10-11-00 RAIL
	72	A 168.53	50 MPH			NO FLAGS		RTB 04-07-04 BANK
	73	A 168.7	25 FRT 30 PSGR			NO FLAGS		

Roxbury Subdivision

Void	Items	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
MOVE	74	C <u>HARTLAND</u>	NORTH SWITCH OOS					RTB 04-20-04 SWD
	75	A 5.06 - 5.1	25 FRT 30 PSGR (CROSSING)			NO FLAGS		RWB 2-03-01 SRF
	76	C <u>WHITE RIVER JCT YARD</u>	TRACK 410 OOS SOUTH END					RWB 03-04-04
	77	C <u>WHITE RIVER JCT YARD</u>	TRACK 406 SOUTH END MIDDLE OF YARD TRACK OOS					RWB 04-21-04
	78	C <u>WHITE RIVER JCT YARD</u>	TRACK 404 IS DESIGNATED SIDING UNTIL FURTHER NOTICE					RWB 03-18-04
	79	C <u>WHITE RIVER JCT YARD</u>	TRACK 423 OOS SOUTH END FOR 200 FEET					RWB 04-29-04 GAUG
	80	A 23.15 - 23.5	10 MPH			NO FLAGS		RTB 05-07-04 GAUG
	81	A 26.3 - 26.5	10 FRT 15 PSGR			NO FLAGS		RWB 07-22-03 GAUG
	82	A 34.36	25 FRT 30 PSGR (CROSSING)			NO FLAGS		RMC 05-28-04 SRF
1026	83	A 35.01	10 MPH (BRIDGE)			NO FLAGS		EAC 03-18-02 TIE TRM EAC
1026	84	A 35.05	25 FRT 30 PSGR			NO FLAGS		RWB 05-07-04 TRM EAC
	85	A 37.7 - 37.8	10 FRT 15 PSGR			NO FLAGS		RTB 06-02-04 GAUG
	86	A 39.8	25 FRT 30 PSGR			NO FLAGS		RRL 03-30-04 BS
	87	A 42.2	25 FRT 30 PSGR			NO FLAGS		RRL 12-12-03 BS
	88	A 46.3	10 FRT 15 PSGR (SWITCH)			NO FLAGS		RRB 06-08-04SRF

ARDC
001398

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	89	A 53.15	25 FRT 30 PSGR (CROSSING)					RRL 11-25-02 SRF
	90	A 61.0	25 FRT 30 PSGR			NO FLAGS		EAC 06-03-04 SRF
	91	A 66.75 - 66.80	10 MPH			NO FLAGS		RTB 06-07-04 RAIL
	92	A 76.5 - 76.66	25 FRT 30 PSGR					RRB 10-28-02-SRF MUD
	93	A 85.95	25 FRT 30 PSGR (CROSSING)					RRL 06-02-04 SRF
	94	A 99.06	25 FRT 30 PSGR (CROSSING)					RRL 06-30-03 SRF
	95	A 114.50	25 FRT 30 PSGR			NO FLAGS		RRB 05-25-04 SRF
	96	A 121.15 - 121.3	10 FRT 15 PSGR			NO FLAGS		RRB 11-26-03 GAUG
	97	A 123.39	25 FRT 30 PSGR			NO FLAGS		RRB 05-07-04 SRF-MUD

SWANTON SUBDIVISION

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	98	C ITALY YARD	UPPERSIDE FROM 139 SWITCH TO 122 SWITCH DO NOT EXCEED 05 MPH ACCOUNT MUD					APL 04-04-03
	99	C ITALY YARD	LOWER LEAD TO NORTH JCT. DO NOT EXCEED 05 MPH ACCOUNT MUD					APL 04-04-03
	100	C ITALY YARD	TRACK 103 OOS MAY BE USED BETWEEN CROSSOVER SWITCHES ONLY					APL 04-04-03
	101	C ITALY YARD	TRACK 111 OOS					APL 04-04-03
	102	C ITALY YARD	TRACK 116 OOS					APL-05-17-04
	103	C ITALY YARD	TRACK 119 OOS ACCOUNT TIE CONDITIONS					APL 04-20-04 TIES
	104	C ITALY YARD	ARCHWAY DERAIL HAS BEEN MOVED 170 FT NORTH OF THE POINTS OF THE ARCHWAY SWITCH					JD 05-28-04
B3	105	C ITALY YARD	SOUTH CROSSOVER SWITCH TO 102 TRACK OOS					DAL 06-08-04 <i>TRM APC</i>
	106	A 0.0 - 0.45	10 MPH			NO FLAGS		RRB 06-07-04
	107	A 1.5	10 MPH (#15 SWITCH)			NO FLAGS		RRB 03-18-03 SRF GAU
	108	A 3.2	10 MPH			NO FLAGS		RRB 08-26-02-SRF
	109	A 4.3 - 4.7	10 MPH			NO FLAGS		RRL 06-07-04
	110	C 7.0 - 9.0	BRUSH WILL NOT CLEAR A MAN ON SIDE OF CAR OR ENGINE					07-20-03
	111	A 7.7	10 MPH			NO FLAGS		APL-03-24-04
	112	A 8.95	10 MPH			NO FLAGS		RRB 07-28-03-SRF
	113	A 9.43	10 MPH (SWITCH)			NO FLAGS		RRB-04-12-04 TIES
	114	A 10.90	10 MPH			NO FLAGS		RRB 03-10-04 SRF
	115	C 12.8 - 13.6	BRUSH WILL NOT CLEAR A MAN ON SIDE OF CAR OR ENGINE					07-20-03
	116	A 14.05	10 MPH			NO FLAGS		RRB-06-02-04-SRF
	117	C 15.2	DRAW BRIDGE OPEN TO NAVIGATION					05-11-04 APL
	118	C 17.0	NORTH END EAST ALBURG TRESSLE - BRUSH WILL NOT CLEAR A MAN ON SIDE OF CAR OR ENGINE					
	119	C <u>ROGERS</u>	SIDING OUT OF SERVICE					RRB 07-22-03
	120	A 15.6 - 18.7	10 MPH			NO FLAGS		RRB 04-28-04 TIE-SRF

ARDC
001399**Burlington Subdivision**

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
------	------	-------------	-------	--------------	---------	------------	------	---------------------------

121 C BURLINGTON

THE SIGNALS AT MAPLE ST. CROSSING MP121.64 AND KING ST. MP121.72 HAVE BEEN REDESIGNED FOR ISLAND CIRCUITS ONLY. CREWS MUST STOP PRIOR TO THE INSULATION AND UPON CLEARANCE OF VEHICLES IN THE CROSSING (TO INSURE THAT THE GATES ARE NOT HUNG-UP), PROCEED ONTO THE CROSSING CIRCUIT TO ACTIVATE THE SIGNALS. AFTER THE SIGNALS HAVE BEEN ACTIVE FOR 20 SECONDS THE TRAIN MAY PROCEED OVER THE CROSSING STOP SIGNALS HAVE BEEN INSTALLED AT THE INSULATED JOINTS NEAREST THE CROSSING.

JBO 05-19-03

END OF DOB NO. 162 JUNE 18, 2004
TOTAL 121 ITEMS 05 PAGES
SAFE DAYS WORKED 561

SYMBOL	ACTUAL CONDITION
TIE	TIE CONDITIONS
SW-T	SWITCH TIMBER
SW-ST	SWITCH STAND
RAIL	RAIL
SWD	SWITCH DEFECT
SRF	SURFACE
GAUG	GAUGE
CVT	CULVERT
FRG	FROG
SNK	SUN KINK
FTHV	FROST HEAVE
W-O	WASH OUT
B-S	BANK SLIDE
TJJB	TIE JOB
STND	STONE NEEDED
WATE	WATER CONDITIONS
MUD	MUD

EXHIBIT 11

WORKING
COPY

ARDC

NEW ENGLAND CENTRAL RAILROAD CO. DAILY OPERATING BULLETIN NO. 163

EFFECTIVE AT 0001 HOURS JUNE 11, 2004

(Void at 0001 JUNE 12, 2004 unless extended by Train Dispatcher)

001400

TRANS. RULE OF THE WEEK: T-2 CROSSING THROUGH RAIL EQUIPMENTMECHANICAL RULE OF THE WEEK: VEHICLES, EQUIPMENT, AND TOOLSMOW RULE OF THE WEEK: 100.4 ON-TRACK SAFETY PROCEDURES**All Subdivisions**

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	1	LATEST SUPERINTENDENTS NOTICE NO. 03-06			LATEST GENERAL ORDER NO.04-13			
	2	WEEKEND DUTY OFFICER NORTHERN DIVISION STEVE LARRO 6/10 AND 6/11						
	3	ALL CREWS MUST BE ON THE LOOKOUT FOR SUSPICIOUS PERSONS ON OR ABOUT RAILROAD PROPERTY. CREWS ARE INSTRUCTED TO REPORT THESE INSTANCES TO THE ARDC & TO LOCAL AUTHORITIES AS NECESSARY.						

Palmer Subdivision

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	4	A 1.4 - 2.25	10 MPH			NO FLAGS		DED 08-13-03 TIE
	5	A 3.9	10 MPH			NO FLAGS		DED 03-10-04 TIE
	6	A 5.3 - 5.5	10 MPH			NO FLAGS		DED 06-05-02 TIE
	7	A 6.2	10 MPH			NO FLAGS		DED 04-18-02 SRF
	8	C THAMESVILLE SIDING	OOS BETWEEN MP12.4 AND MP12.5					DED 04-22-04 GAUG
	9	A 14.15	10 MPH (NORWICH TUNNEL)			NO FLAGS		MJP 09-05-03 WATER
	10	A 16.8	10 MPH (BRIDGE)			NO FLAGS		DED 05-25-04 BT
	11	A 18.54	10 MPH			NO FLAGS		DED 03-10-04 FROG
	12	A 23.07	10 MPH			NO FLAGS		DED 04-13-04 SRF
	13	A 25.26 - 25.36	25 MPH			NO FLAGS		DWW 05-07-04
	14	A 26.03	25 MPH			NO FLAGS		DED 10-22-03 SRF
	15	A 27.5 - 27.9	25 MPH			NO FLAGS		DED 05-26-04 TIES
	16	C 29.99	TRACK 852 AIRLINE TRACK OOS					DED 04-24-03
	17	A 35.9	25 MPH			NO FLAGS		DED 08-26-03 TIE
	18	A 38.65	25 MPH			NO FLAGS		
	19	A 39.6 - 39.65	25 MPH			NO FLAGS		DED 03-31-04 TIE
	20	A 40.95	25 MPH			NO FLAGS		DED 02-27-04 SRF
	21	A 42.75 - 42.8	25 MPH			NO FLAGS		DED 03-30-04 TIE
	22	A 46.45 - 46.60	10 MPH			NO FLAGS		DED 03-18-03-TIE
	23	C STATE LINE	SIDING OOS SOUTH OF MP 55					DED 05-27-04 TIES
	24	A 55.9	10 MPH			NO FLAGS		DED-04-13-04-SRF
	25	A 59.54	25 MPH (BRIDGE)			NO FLAGS		DED-03-26-04-SRF
	26	A 60.8	10 MPH			NO FLAGS		DED 03-26-04-SRF

ARDC
001401

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	27	A 62.31	25 MPH			NO FLAGS		JSV 05-20-04
	28	C <u>PALMER YARD</u>	SOUTH CROSSOVER TRACK 780 TO MAIN TRACK OOS					DWW 04-12-02
	29	C <u>PALMER YARD</u>	TRACK 789 FROM RED FLAG TO A POINT 300 FEET NORTH OOS					
	30	A 65.2 - 65.25	10 MPH			NO FLAGS		DED 05-27-04 GAUG
	31	A 65.45 - 66.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	32	A 67.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	33	A 67.23	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
1000	34	A 67.73	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
1000	35	A 67.94	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	36	A 68.19	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	37	A 68.4 - 68.5	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	38	A 68.66	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	39	C <u>BARRETT'S</u>	TRACK 758 M-1 DNE 5MPH					DWW 12-02-03
	40	A 69.45 - 69.75	25 FRT 30 PSGR			NO FLAGS		DED 11-06-02 TIE
	41	A 72.67	25 FRT 30 PSGR (CULVERT)			NO FLAGS		DED 05-07-04 CVT
	42	A 74.65 - 75.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	43	A 75.54	25 FRT 30 PSGR			NO FLAGS		DED 06-07-04 RAIL
	44	A 75.6	30 MPH			NO FLAGS		DED 04-29-04 RAIL
	45	A 77.05	10 MPH			NO FLAGS		DED 06-07-04 RAIL
	46	A 77.25	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	47	A 78.1	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	48	A 78.17	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	49	A 79.50 - 79.75	25 FRT 30 PSGR			NO FLAGS		DED 06-03-04 TIES
	50	A 79.8	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	51	A 81.95	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	52	A 82.83	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	53	A 83.14	25 FRT 30 PSGR			NO FLAGS		DED 02-11-04 SRF
	54	A 84.22	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
66	55	A 84.3	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
66	56	A 84.47	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	57	A 84.6	25 FRT 30 PSGR			NO FLAGS		DED 06-04-04 TIES
	58	A 84.88	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	59	C 84.99	SOUTH END AMHERST SIDING OOS FOR 400 FEET					DED 08-15-03 TIE
	60	A 86.37	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR

ARDC
001402

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	61	A 87.15	50 MPH			NO FLAGS		TJM 09-17-02 SPERRY
	62	C 87.94	25 FRT 30 PSGR			NO FLAGS		DED 05-14-04 SRF
	63	A 87.99	50 MPH			NO FLAGS		DED 09-08-02 SPERRY
	64	A 88.15 - 88.2	10 FRT 15 PSGR			NO FLAGS		DED 05-21-04 SRF
1008	65	A 89.73	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR <i>TJM</i>
	66	A 91.5	25 FRT 30 PSGR (CROSSING)			NO FLAGS		DED 05-21-04 SRF
	67	A 94.08	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	68	A 97.2	25 FRT 30 PSGR			NO FLAGS		DED 03-05-04 SRF
	69	A 97.9	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	70	A 98.58	10 MPH (BRIDGE)			NO FLAGS		DED 07-13-03 BRG
	71	A 98.75	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	72	A 98.86	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	73	A 99.47	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	74	A 99.68	10 FRT 15 PSGR			NO FLAGS		DED 06-01-04 SRF
	75	A 101.19	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	76	A 102.45	25 FRT 30 PSGR (BRIDGE)			NO FLAGS		DED 04-02-04 SRF
1009	77	A 103.1 - 103.24	10 FRT 15 PSGR			NO FLAGS		DED 03-05-04 SRF <i>TJM</i>
	78	A 103.4	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	79	A 109.67	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	80	A 109.93	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	81	A 111.6 - 111.80	10 MPH			NO FLAGS		TJM 05-26-04 TIES
	82	A 113.2 - 113.6	25 FRT 30 PSGR			NO FLAGS		RTB 04-14-04 TIES
	83	A 114.25	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	84	A 115.93	25 MPH			NO FLAGS		09-02-03 RAIL
	85	C 116.0	HOT BOX DETECTOR IN SERVICE TRAINS TO MONITOR CHANNEL 1					
	86	A 116.62	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	87	A 118.7 - 119.0	25 FRT 30 PSGR			NO FLAGS		RTB 04-12-04 MUD
	88	C <u>BRATTLEBORO</u>	NORTH END OF TRACK 634, 635 AND 636 OOS TO CEMENT DOCK					JRS 03-24-04
1010	89	A 120.45 - 120.5	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR <i>TJM</i>
	90	A 121.0 - 121.57	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	91	A 121.25	10 MPH			NO FLAGS		RTB 04-14-04 RAIL
1011	92	B 123.0 - 123.7	0600-1800 ANDERSON YES STOP YELLOW / RED FLAGS AT MP 122.18 AND MP 124.70					WFA 06-11-04
MA	93	A 123.4	25 FRT 30 PSGR					WFA-06-07-04

ARDC
001403

Void	Items	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	94	C 123.4	TEMPORARY CROSSING ONLY IN USE WITH FORM B PROTECTION					WFA 05-07-04
105	95	A 133.15	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	96	A 135.75	10 FRT 15 PSGR			NO FLAGS		RTB 11-10-03-SRF BS
	97	A 141.2	10 FRT 15 PSGR			NO FLAGS		RTB-04-21-04-SRF
	98	A 142.55	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	99	A 143.07	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	100	A 145.5	10 FRT 15 PSGR			NO FLAGS		MJP 06-10-04 G. CAR
	101	A 149.5 - 149.6	25 FRT 30 PSGR			NO FLAGS		RWB 11-04-03 CVT
	102	A 151.05 - 151.57	10 FRT 15 PSGR			NO FLAGS		MJP 06-09-04 G. CAR
	103	A 155.65	10 FRT 15 PSGR			NO FLAGS		RWB 11-14-04 ROCKS
	104	A 160.0	10 MPH			NO FLAGS		RTB-05-26-04-TIE
	105	A 162.10 - 163.0	50 MPH			NO FLAGS		DED 10-01-01 SPERY
	106	C 166.4	HOT BOX DETECTOR IN SERVICE TRAINS TO MONITOR CHANNEL 1					12-20-03
	107	A 168.53	50 MPH			NO FLAGS		MJP 10-11-00 RAIL
	108	A 168.7	25 FRT 30 PSGR			NO FLAGS		RTB 04-07-04 BANK

Roxbury Subdivision

Void	Items	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	109	A 0.7	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	110	A 5.06 - 5.1	25 FRT 30 PSGR (CROSSING)			NO FLAGS		RWB 2-03-01 SRF
	111	C <u>HARTLAND</u>	NORTH SWITCH OOS					RTB 04-20-04 SWD
	112	A 10.15	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	113	A 12.7 - 12.75	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	114	A 13.25 - 13.4	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	115	C <u>WHITE RIVER</u> JCT YARD	TRACK 410 OOS SOUTH END					RWB 03-04-04
	116	C <u>WHITE RIVER</u> JCT YARD	TRACK 406 SOUTH END MIDDLE OF YARD TRACK OOS					RWB 04-21-04
	117	C <u>WHITE RIVER</u> JCT YARD	TRACK 404 IS DESIGNATED SIDING UNTIL FURTHER NOTICE					RWB 03-18-04
	118	C <u>WHITE RIVER</u> JCT YARD	TRACK 423 OOS SOUTH END FOR 200 FEET					RWB 04-29-04 GAUG
	119	A 14.0 - 17.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	120	A 21.3	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	121	A 23.15 - 23.8	10 MPH			NO FLAGS		RTB 05-07-04 GAUG
	122	A 23.2 - 23.6	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR

A 15.25 - 15.65 10 + 15
A 14.25 14.3 10 + 15

001404
ARDC

Vold	Items	From Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
1010	423	A 26.0 - 27.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
1010	124	A 26.3 - 26.5	10 FRT 15 PSGR			NO FLAGS		RWB 07-22-03 GAUG
1010	425	A 27.0	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
1010	426	A 28.55	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
1059	127	A 29.0 - 29.3	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	128	A 30.75	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
0811	129	A 32.3	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
0811	430	A 32.9 - 32.05	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	131	A 33.7	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
0811	132	A 33.8	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	133	A 34.36	25 FRT 30 PSGR (CROSSING)			NO FLAGS		RMC 05-28-04 SRF
	134	A 35.01	25 FRT 30 PSGR MPH (BRIDGE)			NO FLAGS		EAC 06-10-04 TIE
1010	135	A 37.0 - 38.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
1010	136	A 37.7 - 37.8	10 FRT 15 PSGR			NO FLAGS		RTB 06-02-04 GAUG
	137	A 39.8	25 FRT 30 PSGR			NO FLAGS		RRL 03-30-04 BS
	138	A 42.2	25 FRT 30 PSGR			NO FLAGS		RRL 12-12-03 BS
	139	A 46.3	10 FRT 15 PSGR (SWITCH)			NO FLAGS		06-10-04 G. CAR
	140	A 53.15	25 FRT 30 PSGR (CROSSING)					RRL 11-25-02 SRF
	141	A 57.0 - 57.25	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
1010	142	A 62.35 - 62.4	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	143	A 61.0	25 FRT 30 PSGR			NO FLAGS		EAC 06-03-04 SRF
1010	144	A 63.0 - 63.55	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	145	A 66.75 - 66.80	10 MPH			NO FLAGS		RTB 06-07-04 RAIL
	146	A 74.25	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	147	A 76.5 - 76.66	25 FRT 30 PSGR					RRB 10-28-02-SRF MUD
	148	A 77.55	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	149	A 85.95	25 FRT 30 PSGR (CROSSING)					RRL 06-02-04 SRF
	150	A 89.4	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	151	A 99.06	25 FRT 30 PSGR (CROSSING)					RRL 06-30-03 SRF
	152	A 111.9	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. CAR
	153	A 113.4 - 114.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	154	A 114.50	25 FRT 30 PSGR			NO FLAGS		RRB 05-25-04 SRF
	155	A 119.5	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR
	156	A 120.6 - 121.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR

A 63.05 63.15 10 & 15
AT AT 63.55 10 & 15

6/10/04
6/10/04

001405

ARDC

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	157	A 121.15 - 121.3	10 FRT 15 PSGR			NO FLAGS		RRB 11-26-03 GAUG
	158	A 123.39	25 FRT 30 PSGR			NO FLAGS		RRB 05-07-04 SRF-MUD
	159	A 124.6	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR <i>SWIF</i>
	160	A 126.85	10 FRT 15 PSGR <i>X crossing</i>			NO FLAGS		06-10-04 G. CAR <i>SWIF</i>
	161	A 131.65	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. CAR <i>SWIF</i>

SWANTON SUBDIVISION

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	162	C ITALY YARD	UPPERSIDE FROM 139 SWITCH TO 122 SWITCH DO NOT EXCEED 05 MPH ACCOUNT MUD					APL 04-04-03
	163	C ITALY YARD	LOWER LEAD TO NORTH JCT. DO NOT EXCEED 05 MPH ACCOUNT MUD					APL 04-04-03
	164	C ITALY YARD	TRACK 103 OOS MAY BE USED BETWEEN CROSSOVER SWITCHES ONLY					APL 04-04-03
	165	C ITALY YARD	TRACK 111 OOS					APL 04-04-03
	166	C ITALY YARD	TRACK 116 OOS					APL-05-17-04
	167	C ITALY YARD	TRACK 119 OOS ACCOUNT TIE CONDITIONS					APL 04-20-04 TIES
<i>void 1715</i>	168	C ITALY YARD	ARCHWAY DERAIL HAS BEEN MOVED 470 FT NORTH OF THE POINTS OF THE ARCHWAY SWITCH					04-05-28-04
	169	A 0.0 - 0.45	10 MPH			NO FLAGS		RRB 06-07-04 <i>PAUL & SWIF</i>
<i>void 1715</i>	170	A 1.5	10 MPH (#15 SWITCH)			NO FLAGS		RRB 03-18-03 SRF GAU
	171	A 3.2	10 MPH <i>X crossing</i>			NO FLAGS		RRB 08-26-02-SRF
	172	A 4.3 - 4.7	10 MPH			NO FLAGS		RRL 06-07-04 <i>SWIF</i>
	173	C 7.0 - 9.0	BRUSH WILL NOT CLEAR A MAN ON SIDE OF CAR OR ENGINE					07-20-03
	174	A 7.7	10 MPH			NO FLAGS		APL-03-24-04 <i>SWIF</i>
	175	A 8.95	10 MPH			NO FLAGS		RRB 07-28-03-SRF
	176	A 9.43	10 MPH (SWITCH)			NO FLAGS		RRB-04-12-04 TIES
	177	A 10.90	10 MPH			NO FLAGS		RRB 03-10-04 SRF
	178	C 12.8 - 13.6	BRUSH WILL NOT CLEAR A MAN ON SIDE OF CAR OR ENGINE					07-20-03
	179	A 14.05	10 MPH			NO FLAGS		RRB-06-02-04-SRF
	180	C 15.2	DRAW BRIDGE OPEN TO NAVIGATION					05-11-04 APL
	181	C 17.0	NORTH END EAST ALBURG TRESSLE - BRUSH WILL NOT CLEAR A MAN ON SIDE OF CAR OR ENGINE					
	182	C <u>ROGERS</u>	SIDING OUT OF SERVICE					RRB 07-22-03
	183	A 15.6 - 18.7	10 MPH			NO FLAGS		RRB 04-28-04 TIE-SRF

001406

Burlington Subdivision

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
------	------	-------------	-------	--------------	---------	------------	------	---------------------------

184 C BURLINGTON

THE SIGNALS AT MAPLE ST. CROSSING MP121.64 AND KING ST. MP121.72 HAVE BEEN REDESIGNED FOR ISLAND CIRCUITS ONLY. CREWS MUST STOP PRIOR TO THE INSULATION AND UPON CLEARANCE OF VEHICLES IN THE CROSSING (TO INSURE THAT THE GATES ARE NOT HUNG-UP), PROCEED ONTO THE CROSSING CIRCUIT TO ACTIVATE THE SIGNALS. AFTER THE SIGNALS HAVE BEEN ACTIVE FOR 20 SECONDS THE TRAIN MAY PROCEED OVER THE CROSSING STOP SIGNALS HAVE BEEN INSTALLED AT THE INSULATED JOINTS NEAREST THE CROSSING.

JBO 05-19-03

END OF DOB NO. 163 JUNE 11, 2004
 TOTAL 184 ITEMS 05 PAGES
 SAFE DAYS WORKED 59

SYMBOL:	ACTUAL CONDITION:
TIE	= TIE CONDITIONS
SW-T	= SWITCH TIMBER
SW-ST	= SWITCH STAND
RAIL	= RAIL
SWD	= SWITCH DEFECT
SRF	= SURFACE
GAUG	= GAUGE
CVT	= CULVERT
FRG	= FROG
SNK	= SUN KINK
FTHV	= FROST HEAVE
W-O	= WASH OUT
B-S	= BANK SLIDE
TLJB	= TIE JOB
STND	= STONE NEEDED
WATE	= WATER CONDITIONS
MUD	= MUD

EXHIBIT 12

ARDC

NEW ENGLAND CENTRAL RAILROAD CO. DAILY OPERATING BULLETIN NO. 185**EFFECTIVE AT 0001 HOURS JULY 03, 2004**

(Void at 0001 JULY 04, 2004 unless extended by Train Dispatcher)

TRANS. RULE OF THE WEEK: GCOR 7.5 TESTING HAND BRAKES**MECHANICAL RULE OF THE WEEK: EYE AND FACE PROTECTION****MOW RULE OF THE WEEK: ENGINEERING SAFETY: SPIKE MAUL****000015****All Subdivisions**

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	1	LATEST SUPERINTENDENT'S NOTICE 03-06			LATEST GENERAL ORDER 04-14			
	2	WEEKEND DUTY OFFICER NORTHERN DIVISION STEVE LARRO 6/10 AND 6/11						
	3	ALL CREWS MUST BE ON THE LOOKOUT FOR SUSPICIOUS PERSONS ON OR ABOUT RAILROAD PROPERTY. CREWS ARE INSTRUCTED TO REPORT THESE INSTANCES TO THE ARDC & TO LOCAL AUTHORITIES AS NECESSARY.						

Palmer Subdivision

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	4	C <u>NEW LONDON</u>	WATCH FOR WORKERS ON BRIDGE NEW LONDON YARD					06-23-04
	5	A 1.4 - 2.25	10 MPH			NO FLAGS		DED 08-13-03 TIE
	6	A 3.9	10 MPH			NO FLAGS		DED 03-10-04 TIE
	7	A 5.3 - 5.5	10 MPH			NO FLAGS		DED 06-05-02 TIE
	8	A 6.2	10 MPH			NO FLAGS		DED 04-18-02 SRF
	9	C <u>THAMESVILLE</u> - SIDING OOS BETWEEN MP12.4 AND MP12.5						DED 04-22-04 GAUG
	10	A 14.15	10 MPH (NORWICH TUNNEL)			NO FLAGS		MJP 09-05-03 WATER
	11	A 16.8	10 MPH (BRIDGE)			NO FLAGS		DED 05-25-04 BT
	12	A 18.54	10 MPH			NO FLAGS		DED 03-10-04 FROG
	13	A 23.07	10 MPH			NO FLAGS		DED 04-13-04 SRF
	14	A 25.26 - 25.36	25 MPH			NO FLAGS		DWW 05-07-04
	15	A 26.03	25 MPH			NO FLAGS		DED 10-22-03 SRF
	16	A 27.5 - 27.9	25 MPH			NO FLAGS		DED 05-26-04 TIES
	17	B <u>WILLAMANTIC</u> (TRACK 854)		CONTRACTOR		NO FLAGS		MLL 06-15-04
	18	C 29.99	TRACK 852 AIRLINE TRACK OOS					DED 04-24-03
	19	A 35.9	25 MPH			NO FLAGS		DED 08-26-03 TIE
	20	A 37.35 - 37.4	10 MPH			NO FLAGS		DED 06-22-04-TIES
	21	A 38.65	25 MPH			NO FLAGS		
	22	A 39.6 - 39.65	25 MPH			NO FLAGS		DED 03-31-04 TIE
	23	A 40.95	25 MPH			NO FLAGS		DED 02-27-04 SRF
	24	A 42.75 - 42.8	25 MPH			NO FLAGS		DED 03-30-04 TIE
	25	A 43.3	10 MPH			NO FLAGS		DED 06-23-04 TIES
	26	A 46.45 - 46.60	10 MPH			NO FLAGS		DED 03-18-03-TIE
	27	A 48.7	10 MPH			NO FLAGS		DED 06-22-04-TIES

000016

ARDC

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	28	C <u>STATE LINE</u>	SIDING OOS SOUTH OF MP 55					DED 05-27-04 TIES
	29	A 55.9	10 MPH			NO FLAGS		DED-04-13-04-SRF
	30	A 56.0 - 56.6	25 MPH			NO FLAGS		DED 06-29-04 STND
	31	A 59.54	25 MPH (BRIDGE)			NO FLAGS		DED-03-26-04-SRF
	32	A 60.8	10 MPH			NO FLAGS		DED 03-26-04-SRF
	33	A 62.31	25 MPH			NO FLAGS		JSV 05-20-04
	34	C <u>PALMER YARD</u>	SOUTH CROSSOVER TRACK 780 TO MAIN TRACK OOS					DWW 04-12-02
	35	C <u>PALMER YARD</u>	TRACK 789 FROM RED FLAG TO A POINT 300 FEET NORTH OOS					
	36	A 65.45 - 66.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. SRF
	37	A 67.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. SRF
	38	A 67.23	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. SRF
	39	A 68.19	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. SRF
	40	A 68.4 - 68.5	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. SRF
	41	A 68.66	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. SRF
	42	C <u>BARRETTS</u>	TRACK 758 M-1 DNE 5MPH					DWW 12-02-03
	43	A 69.45 - 69.75	25 FRT 30 PSGR			NO FLAGS		DED 11-06-02 TIE
	44	A 72.67	25 FRT 30 PSGR (CULVERT)			NO FLAGS		DED 05-07-04 CVT
	45	C <u>BELCHERTOWN</u>	TRACK 751 OOS ACCOUNT MOW EQUIPMENT					DED 06-16-04
	46	A 74.65 - 75.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. SRF
	47	A 77.11	25 FRT 30 PSGR			NO FLAGS		DED-06-18-04FROG
	48	A 79.50 - 79.80	25 FRT 30 PSGR			NO FLAGS		DED 06-03-04 TIES
	49	A 83.44	10 FRT 15 PSGR (BRIDGE)			NO FLAGS		DED 07-02-04
	50	A 84.22 - 84.88	25 FRT 30 PSGR			NO FLAGS		MJP 06-30-04
	51	C 84.99	SOUTH END AMHERST SIDING OOS FOR 400 FEET					DED 08-15-03 TIE
	52	A 86.37	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. SRF
	53	A 87.15	50 MPH			NO FLAGS		TJM 09-17-02 SPERRY
	54	A 87.99	50 MPH			NO FLAGS		DED 09-08-02 SPERRY

000017

ARDC

VOID	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	55	A 98.58	10 MPH (BRIDGE)			NO FLAGS		DED 07-13-03 BRG
	56	A 99.68	10 FRT 15 PSGR			NO FLAGS		DED 06-01-04 SRF
	57	A 108.8 -108.95	25 FRT 30 PSGR			NO FLAGS		TJM 0615-04 TIES
	58	A 109.67	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. TIES
	59	A 109.93	25 FRT 30 PSGR			NO FLAGS		06-10-04 G. TIES
	60	C 110.5	HAZARDOUS WALKING CONDITIONS					RKB 06-29-04
	61	A 111.6 - 111.80	10 MPH			NO FLAGS		TJM 05-26-04 TIES
	62	A 113.0 - 113.6	10 FRT 15 PSGR			NO FLAGS		JRS 07-02-04 TIES
	63	A 113.9 - 114.5	10 FRT 15 PSGR			NO FLAGS		TJM 06-30-04 GAUG
	64	A 115.93	25 MPH			NO FLAGS		09-02-03 SRF
	65	C 116.0	HOT BOX DETECTOR IN SERVICE TRAINS TO MONITOR CHANNEL 1					
	66	A 118.85	25 FRT 30 PSGR (BRIDGE)			NO FLAGS		MJP 06-18-04 ALIGN
	67	A 119.81	10 MPH			NO FLAGS		JRS 06-17-04 FROG
	68	C <u>BRATTLEBORO</u>	NORTH END OF TRACK 634, 635 AND 636 OOS TO CEMENT DOCK					JRS 03-24-04
	69	A 121.0 - 121.57	10 FRT 15 PSGR			NO FLAGS		06-10-04 G. GAUG
	70	A 121.25	10 MPH			NO FLAGS		RTB 04-14-04 RAIL
	71	A 122.8 - 123.0	10 FRT 15 PSGR			NO FLAGS		TJM 06-30-04 TIES
	72	A 123.4	25 FRT 30 PSGR					WFA-06-07-04
	73	C 123.4	TEMPORARY CROSSING ONLY IN USE WITH FORM B PROTECTION					WFA 05-07-04
	74	A 134.1 - 134.2	10 FRT 15 PSGR			NO FLAGS		TJM 06-15-04 GAUG
	75	A 135.75	25 FRT 30 PSGR			NO FLAGS		MJP-06-18-04-BS
	76	A 151.49 - 151.82	10 FRT 15 PSGR			NO FLAGS		TJM-06-18-04-GAUG
	77	A 155.3 - 155.55	25 FRT 30 PSGR			NO FLAGS		TJM-06-24-04-SRF
	78	A 155.65	10 FRT 15 PSGR			NO FLAGS		RWB 11-14-04 ROCKS
	79	A 159.9	10 MPH			NO FLAGS		TJM-06-18-04-SRF
	80	A 162.10 - 163.0	50 MPH			NO FLAGS		DED 10-01-01 SPERY
	81	C 166.4	HOT BOX DETECTOR IN SERVICE TRAINS TO MONITOR CHANNEL 1					12-20-03
	82	A 168.53	50 MPH			NO FLAGS		MJP 10-11-00 RAIL
	83	A 168.7	25 FRT 30 PSGR			NO FLAGS		RTB 04-07-04 BANK

000018

ARDC

Roxbury Subdivision

Void	Items	Form	Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	84	A	0.7	10 FRT 15 PSGR			NO FLAGS		06-10-04 SRF-TIE
	85	A	5.06 - 5.1	25 FRT 30 PSGR (CROSSING)			NO FLAGS		RWB 2-03-01 SRF
	86	C	<u>HARTLAND</u>	NORTH SWITCH OOS					RTB 04-20-04 SWD
	87	A	10.15	25 FRT 30 PSGR			NO FLAGS		06-10-04 SRF
	88	A	11.7	25 FRT 30 PSGR			NO FLAGS		06-11-04 SRF
	89	A	12.7 - 12.75	25 FRT 30 PSGR			NO FLAGS		06-10-04 SRF
	90	A	13.4	25 FRT 30 PSGR			NO FLAGS		RRB 06-12-04 SRF
	91	A	14.25 - 14.3	10 FRT 15 PSGR			NO FLAGS		06-10-04 GAUG
	92	C	<u>WHITE RIVER JCT YARD</u>	TRACK 410 OOS SOUTH END					RWB 03-04-04
	93	C	<u>WHITE RIVER JCT YARD</u>	TRACK 406 SOUTH END MIDDLE OF YARD TRACK OOS					RWB 04-21-04
	94	C	<u>WHITE RIVER JCT YARD</u>	TRACK 404 IS DESIGNATED SIDING UNTIL FURTHER NOTICE					RWB 03-18-04
	95	C	<u>WHITE RIVER JCT YARD</u>	TRACK 423 OOS SOUTH END FOR 200 FEET					RWB 04-29-04 GAUG
	96	C	<u>WHITE RIVER JCT YARD</u>	NORTH END TRACK 407 TARGET MISSING FROM THE SWITCH					RTB 06-28-04
	97	A	23.2 - 23.6	10 MPH			NO FLAGS		RTB 05-07-04 GAUG
	98	A	33.7	10 FRT 15 PSGR (BRIDGE)			NO FLAGS		06-10-04 GAUGE TIES
	99	A	34.36	25 FRT 30 PSGR (CROSSING)			NO FLAGS		RMC 05-28-04 SRF
	100	A	35.01	25 FRT 30 PSGR MPH (BRIDGE)			NO FLAGS		EAC 06-10-04 TIE
	101	A	42.2	25 FRT 30 PSGR			NO FLAGS		RRL 12-12-03 BS
	102	A	46.3	25 FRT 30 PSGR (SWITCH)			NO FLAGS		RRL-06-14-04 SRF-MUD
	103	A	53.15	25 FRT 30 PSGR (CROSSING)					RRL 11-25-02 SRF
	104	A	61.0	25 FRT 30 PSGR			NO FLAGS		EAC 06-03-04 CULVERT
	105	A	64.9	10 MPH			NO FLAGS		RTB-06-24-04-RAIL
	106	A	74.25	10 FRT 15 PSGR (BRIDGE)			NO FLAGS		06-10-04 GAUGE-TIE
	107	C	<u>MONTPELIER JCT</u>	SOUTH SWITCH TO THE WYE WHEN IN NORMAL POSITION (GREEN TARGET) WILL BE LINED FOR TRACK 334 THE SHORT LEG OF WYE INSTEAD OF TRACK 333 THE WYE SIDING					
	108	C	<u>MONTPELIER JCT</u>	SIDING OOS					RTB-06-22-04-TIE-KINK
	109	A	76.5 - 76.66	25 FRT 30 PSGR					RRB 10-28-02-SRF MUD
	110	A	85.95	25 FRT 30 PSGR (CROSSING)					RRL 06-02-04 SRF
	111	A	89.4	25 FRT 30 PSGR			NO FLAGS		06-10-04 STONE
	112	A	99.06	25 FRT 30 PSGR (CROSSING)					RRL 06-30-03 SRF-MUD
	113	A	113.4 - 114.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 SRF-RAIL

000019

ARDC

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	114	A 114.50	25 FRT 30 PSGR			NO FLAGS		RRB 05-25-04 SRF
	115	A 119.5	10 FRT 15 PSGR	(SWITCH)		NO FLAGS		06-10-04 SRF
	116	A 120.6 - 121.0	10 FRT 15 PSGR			NO FLAGS		06-10-04 SRF
	117	A 121.15 - 121.3	10 FRT 15 PSGR			NO FLAGS		RRB 11-26-03 GAUG
	118	A 123.39	25 FRT 30 PSGR			NO FLAGS		RRB 05-07-04 SRF-MUD
	119	A 124.6	10 FRT 15 PSGR			NO FLAGS		06-10-04 SRF
	120	A 126.85	10 FRT 15 PSGR	(CROSSING)		NO FLAGS		06-10-04 SRF-MUD
	121	A 131.65	10 FRT 15 PSGR			NO FLAGS		06-10-04 SRF

SWANTON SUBDIVISION

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
	122	C ITALY YARD	UPPERSIDE FROM 139 SWITCH TO 122 SWITCH DO NOT EXCEED 05 MPH ACCOUNT MUD					APL 04-04-03
	123	C ITALY YARD	LOWER LEAD TO NORTH JCT. DO NOT EXCEED 05 MPH ACCOUNT MUD					APL 04-04-03
	124	C ITALY YARD	TRACK 103 OOS MAY BE USED BETWEEN CROSSOVER SWITCHES ONLY					APL 04-04-03
	125	C ITALY YARD	TRACK 116 OOS					APL-05-17-04
	126	C ITALY YARD	TRACK 119 OOS ACCOUNT TIE CONDITIONS					APL 04-20-04 TIES
	127	C ITALY YARD	TRACK 122 OOS					APL 06-14-04 TIES
	128	C ITALY YARD	12 CROSSOVER OOS					MLL-06-26-04
	129	A 0.0 - 0.45	10 MPH			NO FLAGS		RRB 06-07-04 GAUG SRF
	130	A 3.2	10 MPH			NO FLAGS		RRB 08-26-02-SRF
	131	A 4.3 - 4.7	10 MPH	(CROSSNG)		NO FLAGS		RRL 06-07-04 SRF
	132	C 7.0 - 9.0	BRUSH WILL NOT CLEAR A MAN ON SIDE OF CAR OR ENGINE					07-20-03
	133	A 7.7	10 MPH			NO FLAGS		APL-03-24-04 SRF
	134	A 8.95	10 MPH			NO FLAGS		RRB 07-28-03-SRF
	135	A 9.43	10 MPH (SWITCH)			NO FLAGS		RRB-04-12-04 TIES
	136	A 10.90	10 MPH			NO FLAGS		RRB 03-10-04 SRF
	137	C 12.8 - 13.6	BRUSH WILL NOT CLEAR A MAN ON SIDE OF CAR OR ENGINE					07-20-03
	138	A 14.05	10 MPH			NO FLAGS		RRB-06-02-04-SRF
	139	C 15.2	DRAW BRIDGE OPEN TO NAVIGATION					05-11-04 APL
	140	C 17.0	NORTH END EAST ALBURG TRESSLE - BRUSH WILL NOT CLEAR A MAN ON SIDE OF CAR OR ENGINE					
	141	C <u>ROGERS</u>	SIDING OUT OF SERVICE					RRB 07-22-03
	142	A 15.6 - 18.7	10 MPH			NO FLAGS		RRB 04-28-04 TIE-SRF

000020

ARDC

Burlington Subdivision

Void	Item	Form Limits	Speed	From - Until	Foreman	Flag At MP	Stop	F.INT. - DATE & TRK COND.
------	------	-------------	-------	--------------	---------	------------	------	---------------------------

143 C BURLINGTON

THE SIGNALS AT MAPLE ST. CROSSING MP121.64 AND KING ST. MP121.72 HAVE BEEN REDESIGNED FOR ISLAND CIRCUITS ONLY. CREWS MUST STOP PRIOR TO THE INSULATION AND UPON CLEARANCE OF VEHICLES IN THE CROSSING (TO INSURE THAT THE GATES ARE NOT HUNG-UP), PROCEED ONTO THE CROSSING CIRCUIT TO ACTIVATE THE SIGNALS. AFTER THE SIGNALS HAVE BEEN ACTIVE FOR 20 SECONDS THE TRAIN MAY PROCEED OVER THE CROSSING STOP SIGNALS HAVE BEEN INSTALLED AT THE INSULATED JOINTS NEAREST THE CROSSING.

JBO 05-19-03

END OF DOB NO. 185 JULY 03, 2004

TOTAL 143 ITEMS 06 PAGES

SAFE DAYS WORKED 81

SYMBOL:	ACTUAL CONDITION:
TIE	= TIE CONDITIONS
SW-T	= SWITCH TIMBER
SW-ST	= SWITCH STAND
RAIL	= RAIL
SWD	= SWITCH DEFECT
SRF	= SURFACE
GAUG	= GAUGE
CVT	= CULVERT
FRG	= FROG
SNK	= SUN KINK
FTHV	= FROST HEAVE
W-O	= WASH OUT
B-S	= BANK SLIDE
TIJB	= TIE JOB
STND	= STONE NEEDED
WATE	= WATER CONDITIONS
MUD	= MUD
BT	= BRIDGE TIMBER

EXHIBIT 13

Federal Railroad Administration

Track Safety Standards Compliance Manual



**United States
Department of Transportation**

Office of Safety Assurance and Compliance

January 1, 2002

January 1, 2002

Track Compliance Manual

conditions as they exist in the track structure. The railroad inspector must include the specific measurement of the track parameter whenever appropriate when describing the nature of the defect per §213.241(b). For example: "wide gage exceeds allowable for class 4 track - 58 inches - track slow ordered to 10 mph." When defects are discovered, the track owner's inspectors must determine the risk imposed and immediately initiate remedial action, in accordance with §213.5. If a speed restriction is used as remedial action, the reduced speed should be shown in the inspection records.

- # Railroad track inspectors are required to list all deviations from the TSS on their inspection record. FRA inspectors should review a railroad inspection record to determine if the reported data accurately indicates the track conditions as they exist in the field. Railroad inspectors are not limited to recording deviations from the TSS (e.g., railroad maintenance items). Inspectors should compare the defects they find with the railroad inspectors reports to determine the level of compliance with the railroad's inspection program. If multiple tracks are being inspected, the records must designate the track traversed, and any tracks not inspected due to visibility obstruction or excessive distance as required under §213.233.
- # When two qualified persons inspect multiple tracks in accordance with §213.233(b), one report or two reports may be optionally prepared. If one report is used, the report must include a notation such as signature, initials or printed name of the second inspector.
- # Rail inspection records must be maintained by the track owner for at least two years after the inspection and for one year after remedial action is taken. The record must specify the location and nature of any rail defects found through internal inspection and the remedial action taken and the date thereof. This record may consist of log sheets combined with a standard rail defect and change-out report, computer records, or other data kept by the track owner and containing all the required information.
- # The rail inspection records must specify the locations of any rail that, due to rail surface conditions, prohibit the railroad from conducting a valid search for internal defects at the required frequency. If a valid search cannot be conducted before the time or tonnage frequency expires, the remedial action and date of remedial action must be recorded on the inspection records.
- # Inspection records must be made available to the FRA or State Inspector for inspection and copying. A track owner may elect to maintain and transfer records through electronic transmission, storage, and retrieval procedures. Each record must have sufficient security to maintain the integrity of the record. Levels of security must identify the person making the inspection as the author

EXHIBIT 14

Eugene J. Trombly - 1/15/2007 NECR v. Springfield Terminal

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CENTRAL)
RAILROAD, INC.)
Plaintiff,)
) CIVIL ACTION
V.) No. 04-30235 MAP
)
SPRINGFIELD TERMINAL)
RAILWAY COMPANY, et al.)
Defendants.)

D E P O S I T I O N

- of -

EUGENE J. TROMBLY

taken on behalf of the Defendants on Monday,
January 15, 2007, at the Holiday Inn, 1068
Williston Road, South Burlington, Vermont,
commencing at 9:37 a.m.

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

RICHARD A. DAVIDSON, JR., ESQUIRE
Flynn & Associates, P.C.
400 Crown Colony Drive, Suite 200
Quincy, Massachusetts 02169
(617) 773-5500

ON BEHALF OF THE DEFENDANTS:

ROBERT B. CULLIFORD, ESQUIRE
Pan Am Systems
14 Aviation Avenue
Portsmouth, New Hampshire 03801
(603) 766-2002

JOHANNA MASSE, RMR, CRR
COURT REPORTERS ASSOCIATES
117 BANK STREET
BURLINGTON, VERMONT 05401
(802) 862-4593

Court Reporters Associates
(802) 862-4593

Eugene J. Trombly - 1/15/2007 NECR v. Springfield Terminal

Page 50

1 A. They were -- if I remember right, they were about
 2 the only ones that had equipment available at that
 3 time.
 4 Q. How many different entities did you talk to?
 5 A. I can't recall.
 6 Q. Two, three, four?
 7 A. I can't recall.
 8 Q. Had you ever done business with Klutts Equipment
 9 before?
 10 A. Yes. Yes.
 11 Q. Had you ever done business with other lessors
 12 of --
 13 A. Yes.
 14 Q. -- railroad equipment? Could you identify some
 15 of those other lessors?
 16 A. I think I talked to Brown Equipment.
 17 Q. And where are they located?
 18 A. They're out of St. Louis. ATE Equipment, I think
 19 it is. ATE, I think I tried contacting them. They're
 20 all out of the St. Louis area, most of them. Very
 21 few.
 22 Q. Similar rates to Klutts?
 23 A. Yeah.
 24 Q. Okay.
 25 MR. CULLIFORD: Can we mark this as 29.

Page 51

1 (Deposition Exhibit No. 29 was
 2 marked for identification.)
 3 BY MR. CULLIFORD:
 4 Q. Were the rates charged for the equipment leased
 5 from Klutts Blue Book?
 6 A. I'd have to look back at the invoices. I'm not
 7 sure.
 8 Q. Okay. If you look at -- there's a monthly rate,
 9 if I'm reading this correctly. Does that help to
 10 refresh your recollection?
 11 A. These are Klutts's monthly rates, yes.
 12 Q. Based on average use, does that -- is that close
 13 to or above or below Blue Book; do you know?
 14 A. I would say they're pretty close.
 15 Q. Okay. We're a little behind the times
 16 technologically, so we have one color picture, which
 17 you get to see.
 18 MR. CULLIFORD: And then we have
 19 black-and-white for you and me.
 20 Q. Are you familiar with those pictures, sir?
 21 A. Yes. Um-hum.
 22 Q. Can you identify what they are pictures of?
 23 A. It's pictures of the bridge deck at Evarts, which
 24 is just south of where the derailment occurred.
 25 Q. Okay. And if I could refer you to the first

Page 52

1 picture, do you recall when that would have been
 2 taken? This picture here.
 3 A. This one?
 4 Q. Yes.
 5 A. I would -- that was probably taken on the 4th.
 6 It was taken after the derailment. You can see where
 7 they actually spiked the guardrail back in. We spiked
 8 it in away from the rail.
 9 Q. Okay. So soon -- soon --
 10 A. Exactly the date, I don't know.
 11 Q. No, but soon after the July 3rd, 2004,
 12 derailment?
 13 A. Yes.
 14 Q. And could you tell us when the second picture
 15 might have been taken?
 16 A. I would say it was taken at the same time.
 17 Q. At the same --
 18 A. I would say so.
 19 Q. Would you say that there are damaged ties in the
 20 second picture?
 21 A. Yes.
 22 Q. Where?
 23 A. All along the -- which would be the east side of
 24 the rail, and there's -- you can't really see them
 25 right here because they're underneath. The camera's

Page 53

1 hiding it. They're underneath that rail. You can see
 2 them down here further.
 3 Q. Okay. Then -- so as I understand the way the
 4 derailment occurred is one wheel of a railcar came off
 5 the rail and was essentially riding down --
 6 A. One set of wheels.
 7 Q. Okay.
 8 A. Yup.
 9 Q. And it was essentially riding down the track on
 10 top of the tie rather than on top --
 11 A. Yes.
 12 Q. -- of the rail; is that --
 13 A. Um-hum.
 14 Q. Okay. So if you look at the first picture and
 15 this damage here, how was that caused?
 16 A. That was caused by -- one -- one wheel was riding
 17 right here. The other wheel was riding on the outside
 18 of this rail over here. The damage that you see here
 19 is -- the opposite wheel is doing this damage on this
 20 side.
 21 Q. Okay. Because this is where I get confused, I
 22 guess. The damage here doesn't seem to be reflected
 23 in -- in the second picture.
 24 A. No. You're looking two different directions.
 25 Q. Okay.

14 (Pages 50 to 53)

EXHIBIT 15

Volume 1, Pages 1-62

Exhibits: 29-30

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CENTRAL RAILROAD, INC.,

Plaintiff

v.

Docket No. 04-30235-MAP

SPRINGFIELD TERMINAL RAILWAY
COMPANY and BOSTON AND MAINE
CORPORATION,

Defendants

DEPOSITION OF A. PETER KARI

Friday, January 12, 2007, 11:51 a.m.

Law Office of Robert H. D'Auria

41 North Road, Suite 205

Bedford, Massachusetts 01730

----Reporter: Kathleen Mullen Silva, RPR, CRR----

Beacon Hill Court Reporting, Inc.

807 Main Street, 2nd Floor

Worcester, Massachusetts 01610

508.753.9286

<p>14</p> <p>1 Q. Now, the sixth car in that consist, can you 2 tell us what the car number was? 3 A. CNIS 413224. 4 Q. And what was the load on that, according to 5 the consist? 6 A. Wood pulp. 7 Q. What is wood pulp? 8 A. A paper product, I believe. 9 Q. Is it a product that is loaded in 10 containers, or is it like an open-top-loaded car? 11 A. It's inside a box car, I believe. 12 Q. Do you know how it's packed in? Have you 13 ever seen it packed in? 14 A. No. 15 Q. Have you ever had the opportunity to see 16 the wood pulp before it was loaded into a rail car 17 in your experience? 18 A. I don't believe so. 19 Q. Do you know how heavy that rail car was? 20 A. I do not believe it says on this consist. 21 Q. Do you know how heavy the train was? 22 A. I don't remember. 1,609 ton. 23 Q. Is that approximately the weight of the 24 trains that you hauled back and forth in 2004 from</p>	<p>16</p> <p>1 A. I believe it was half an hour. 2 Q. What milepost did you start at? 3 A. We start at Nut they call it, and I believe 4 that's milepost or mileage approximately 13.4. 5 Q. Do you recall whether or not you stopped at 6 all between 13.4 and the point of derailment? 7 A. No, we did not. 8 Q. You didn't pick up any cars and send any 9 cars off? 10 A. No. 11 Q. So this was going to be a straight run 12 through that day down to East Deerfield? 13 A. No. Usually we'll stop -- it all depends 14 on where the dispatcher stops us or if we have work 15 to do. 16 Q. Okay. You don't recall having any work to 17 do being assigned on this run? 18 A. We probably would have stopped in Bellows 19 Falls. 20 Q. When you say "probably," do you have a 21 specific memory of that? 22 A. Well, we didn't make it. 23 Q. I understand. I'm saying of that fact that 24 you were supposed to stop at Bellows Falls.</p>
<p>15</p> <p>1 White River down to East Deerfield? 2 A. It varies. 3 Q. And it varied because of what? 4 A. The number of cars you have. 5 Q. So if you had approximately 16 cars, would 6 that be a normal weighted train for you, 7 approximately? 8 A. It could be. If you had all loads or all 9 empties, but... 10 Q. What were you basically hauling back and 11 forth on a regular basis between White River 12 Junction and East Deerfield when you were on that 13 run back in 2004? 14 A. Liquid propane, wood pulp, newsprint, 15 empties going north. 16 Q. You're going south, though. 17 A. Yes, this one. 18 Q. I'm talking about this particular line, 19 going south on this run. I understand the runs are 20 different depending on whether you're bringing a 21 load up or bringing empties back. 22 A. Yes. 23 Q. Now, that morning how long had you been 24 operating the train before it derailed?</p>	<p>17</p> <p>1 A. I don't remember. 2 Q. What were the weather conditions at White 3 River Junction when you left the yard? 4 A. It was foggy. 5 Q. We all know what foggy means, but what do 6 you mean by foggy? 7 A. You can't see that far. 8 Q. Okay. For how long were you in the fog? 9 A. Maybe we'd be in it, out of it. I don't 10 know the time. 11 Q. Well, the derailment -- the point of 12 derailment was at 10.18. I'll represent that to 13 you. Okay? And you eventually derailed down by 14 5.6, 5.7. So you're talking you ran approximately, 15 give or take, eight miles between 13.4 and 5.5 or 16 5.6. Do you agree with me approximately? 17 A. Yes. 18 Q. During that eight miles before you felt the 19 tug and the emergency brake apply, how much of that 20 13-mile run were you in the fog? 21 A. I don't remember. 22 Q. Do you remember feeling anything in the 23 train that was slightly unusual or jostling in any 24 way, shape or form to you at approximately milepost</p>

(Pages 18 to 21)

<p style="text-align: right;">18</p> <p>1 10.1 and milepost 10.2?</p> <p>2 A. No, I did not.</p> <p>3 Q. As you proceeded south from milepost 10.18</p> <p>4 to the point of derailment, you have to cross</p> <p>5 through three crossings, correct? There's two farm</p> <p>6 crossings and a public crossing?</p> <p>7 A. Yes.</p> <p>8 Q. And there's also a bridge, correct?</p> <p>9 A. Yes.</p> <p>10 Q. How long is that bridge, if you can</p> <p>11 estimate for us?</p> <p>12 A. Eighty feet.</p> <p>13 Q. When you were in the fog, how far could you</p> <p>14 see?</p> <p>15 A. Four, five car lengths.</p> <p>16 Q. When you say four or five car lengths, are</p> <p>17 we using a car length in terms of approximately 60</p> <p>18 feet?</p> <p>19 A. Yes.</p> <p>20 Q. Were you more in the fog or more out of the</p> <p>21 fog as you came down?</p> <p>22 A. I don't remember.</p> <p>23 Q. Did you restrict your speed for any reason</p> <p>24 as you were coming down through the fog?</p>	<p style="text-align: right;">20</p> <p>1 Q. So as you came through the curve that's at</p> <p>2 10.2 down to 10.16, were you applying your brakes at</p> <p>3 that curve?</p> <p>4 A. They were applied.</p> <p>5 Q. When you say you applied your brakes, are</p> <p>6 you using both your independent and automatic</p> <p>7 brakes?</p> <p>8 A. Only the automatic.</p> <p>9 Q. So you're using the train brakes, just for</p> <p>10 the purposes of the record?</p> <p>11 A. Yes.</p> <p>12 MR. DAVIDSON: Off the record.</p> <p>13 (Discussion held off the record.)</p> <p>14 Q. Did you notice anything out of the ordinary</p> <p>15 as you were coming through the curve at 10.2 to</p> <p>16 10.16 as you were applying the brakes?</p> <p>17 A. No, I did not.</p> <p>18 Q. Do you remember what brake application you</p> <p>19 were making, how many pounds you were applying?</p> <p>20 A. I don't remember.</p> <p>21 Q. Did anyone ask you that after the</p> <p>22 derailment?</p> <p>23 A. I don't believe so.</p> <p>24 Q. After you passed by 10.16, how many curves</p>
<p style="text-align: right;">19</p> <p>1 A. No.</p> <p>2 Q. Did you restrict your speed because of the</p> <p>3 fog for any reason?</p> <p>4 A. No.</p> <p>5 Q. Did you stop at any time between milepost</p> <p>6 13.4 and milepost 6?</p> <p>7 A. No.</p> <p>8 Q. You knew about a speed restriction at</p> <p>9 approximately milepost 10.16, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And what was that speed restriction?</p> <p>12 A. Twenty-five.</p> <p>13 Q. When did you commence your brake</p> <p>14 application to slow your train down to 25 miles an</p> <p>15 hour for that section; how far back?</p> <p>16 A. I don't remember.</p> <p>17 Q. As you were at 10.18, which is</p> <p>18 approximately 105 or so feet up the north, were you</p> <p>19 in the process of commencing your brake application?</p> <p>20 A. Long before that.</p> <p>21 Q. But were you consistently bringing the</p> <p>22 speed of your train down through the use of your</p> <p>23 brakes prior to this restriction?</p> <p>24 A. I believe so, yes.</p>	<p style="text-align: right;">21</p> <p>1 are there between 10.16 and 5.7 on that line?</p> <p>2 A. 10.16 you are in a curve.</p> <p>3 Q. Correct.</p> <p>4 A. Four.</p> <p>5 Q. Do you know, as you sit here today, whether</p> <p>6 any of those curves are more than two degrees?</p> <p>7 A. No, I do not.</p> <p>8 Q. If you had a track map, could you refer to</p> <p>9 that to see if there's any curves that are more than</p> <p>10 two degrees?</p> <p>11 A. I do not know.</p> <p>12 Q. Have you seen a track map of that line</p> <p>13 recently?</p> <p>14 A. No.</p> <p>15 Q. What have you reviewed before you came in</p> <p>16 and testified today?</p> <p>17 A. Only the transcript.</p> <p>18 Q. And the transcript being?</p> <p>19 A. Of the hearing.</p> <p>20 Q. Disciplinary hearing that was held?</p> <p>21 A. Yes.</p> <p>22 Q. And that was both for you and your</p> <p>23 conductor, correct?</p> <p>24 A. Yes.</p>

22

1 Q. And it's about a half-inch, inch thick?
 2 A. I'd say.
 3 Q. Did you see the attachments that were with
 4 that or just the transcript?
 5 A. Just the transcript.
 6 Q. And how did you come to acquire a copy of
 7 that transcript?
 8 A. It was given to us.
 9 Q. When was that given to you?
 10 A. I don't remember.
 11 Q. A month ago, two months ago?
 12 A. Oh, after the hearing.
 13 Q. And that was held approximately two or
 14 three months after the derailment?
 15 A. Yes.
 16 Q. So back in 2004? The derailment was in
 17 2004.
 18 A. Yes.
 19 Q. Okay?
 20 A. Mm-hmm.
 21 Q. Did you receive any other documents from
 22 any source to review for your testimony?
 23 A. No.
 24 Q. During the course of the last two years,

23

1 have you received any documents regarding any
 2 factual issue in this case from any source?
 3 MR. WRIGHT: Can we clarify that a
 4 little bit? I'm not sure what you mean.
 5 MR. DAVIDSON: I'm going to leave it
 6 wide open to see if he got any documents from any
 7 source regarding the factual nature of this
 8 derailment.
 9 A. No, I do not.
 10 Q. So no one has contacted you to discuss
 11 whatever testimony that you have, other than counsel
 12 for the B&M?
 13 A. No.
 14 Q. Would you describe how the derailment
 15 occurred for us; where were you, what you felt.
 16 A. I was making an application, slowing down
 17 for another speed restriction, and I believe it was
 18 my second application, and the train went into
 19 emergency, meaning the brakes get fully applied and
 20 you could feel the tug, and that was it.
 21 Q. When you say you could feel a tug, you're
 22 sitting obviously in the engineer's seat and you're
 23 sitting on the right side of the locomotive?
 24 A. Yes.

24

1 Q. And the controls are on your left?
 2 A. To my left.
 3 Q. Your throttle and your brakes, correct?
 4 A. Yes.
 5 Q. So you have your throttle, you have your
 6 independent brake, and that's your brake for the
 7 locomotive, and then you have your automatic brakes,
 8 which is the train brakes?
 9 A. Yes.
 10 Q. Which brake system are you operating on
 11 your second application?
 12 A. The automatic.
 13 Q. So you're trying to keep your train tight,
 14 correct?
 15 A. Yes.
 16 Q. When you say you felt a tug, would you
 17 describe what you mean by "felt a tug"?
 18 A. Something's holding the train back.
 19 Q. Did you lurch forward in your seat at all?
 20 A. Not a lurch, just about (indicating).
 21 Q. Did it feel like someone tapped you from
 22 the rear if you were in a car, that type of tug?
 23 A. No. It would be in the other direction,
 24 holding you back.

25

1 Q. So it's pulling you back?
 2 A. You go forward a little.
 3 Q. You go back a little, but then you're
 4 pushed back into your chair?
 5 A. I don't believe I was pushed.
 6 Q. Did you feel pressure into your chair?
 7 A. I don't think so.
 8 Q. Did you feel one tug or two?
 9 A. I believe it was one, then two.
 10 Q. So the emergency brake application occurred
 11 without you touching the emergency brakes, correct?
 12 A. Yes.
 13 Q. And what's your understanding on why that
 14 occurred?
 15 A. The train line separated, the air pressure
 16 separated.
 17 Q. Your locomotive came to a stop?
 18 A. Yes.
 19 Q. How many cars were still on the track
 20 behind you?
 21 A. I do not remember.
 22 Q. How many cars ended up on the ground?
 23 A. I believe it was six.
 24 Q. Do you know which car was the car that

(Pages 26 to 29)

<p style="text-align: right;">26</p> <p>1 derailed first?</p> <p>2 A. I believe it was the sixth car.</p> <p>3 Q. And according to the document that's in</p> <p>4 front of you, the consist, could you, once again,</p> <p>5 tell us what the car number is for that car?</p> <p>6 A. CNIS 413224.</p> <p>7 Q. Was that rail car on its side, or was it</p> <p>8 just off the tracks?</p> <p>9 A. I do not remember.</p> <p>10 Q. It would be fair to say that you did not</p> <p>11 get out of your locomotive at the scene?</p> <p>12 A. No, I did.</p> <p>13 Q. When did you get out of your locomotive?</p> <p>14 A. Pardon me?</p> <p>15 Q. When?</p> <p>16 A. Just after.</p> <p>17 Q. Did you go back and look at the derailment</p> <p>18 site?</p> <p>19 A. Yes, we did.</p> <p>20 Q. That was after you secured your locomotive?</p> <p>21 A. Yes.</p> <p>22 Q. Who did you go back and look at that scene</p> <p>23 with?</p> <p>24 A. Mr. Scappace.</p>	<p style="text-align: right;">28</p> <p>1 A. I don't believe he did, but I do not know.</p> <p>2 Q. Who called dispatch?</p> <p>3 A. I believe Mr. Scappace did.</p> <p>4 Q. Did you have any communications with</p> <p>5 dispatch that day regarding the derailment?</p> <p>6 A. I don't believe so.</p> <p>7 Q. It's Mr. Scappace's job to make that</p> <p>8 communication, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Being the conductor?</p> <p>11 A. Yes.</p> <p>12 Q. Did you have any cellular telephone calls</p> <p>13 with anyone regarding that derailment?</p> <p>14 A. I don't believe so.</p> <p>15 Q. Did you contact anyone outside the company</p> <p>16 regarding the derailment that day?</p> <p>17 A. I don't believe so, no.</p> <p>18 Q. So your two engines were upright?</p> <p>19 A. Yes.</p> <p>20 Q. Were there any cars behind the second</p> <p>21 engine on the track still?</p> <p>22 A. Yes.</p> <p>23 Q. You don't remember how many?</p> <p>24 A. If the sixth car went on the ground, five</p>
<p style="text-align: right;">27</p> <p>1 Q. What did you see when you got back there?</p> <p>2 A. The cars were on the ground.</p> <p>3 Q. When you say "on the ground," were they</p> <p>4 upright, on their sides?</p> <p>5 A. Some were upright, some were on their</p> <p>6 sides.</p> <p>7 Q. Were any piled up on top of each other or</p> <p>8 up against each other?</p> <p>9 A. There were some against each other, I</p> <p>10 believe.</p> <p>11 Q. Do you remember the ground being dug up</p> <p>12 pretty substantially?</p> <p>13 A. Yes.</p> <p>14 Q. Do you remember the trucks being off the</p> <p>15 rail cars?</p> <p>16 A. Yes.</p> <p>17 Q. Do you remember approximately how many cars</p> <p>18 were missing their trucks?</p> <p>19 A. No, I don't.</p> <p>20 Q. Did you have a camera with you?</p> <p>21 A. No, I didn't.</p> <p>22 Q. Did you make a diagram of it?</p> <p>23 A. No, I didn't.</p> <p>24 Q. Did Mr. Scappace make a diagram?</p>	<p style="text-align: right;">29</p> <p>1 would be.</p> <p>2 Q. Were there any cars beyond the seventh car</p> <p>3 still on the track?</p> <p>4 A. Yes, I believe there were.</p> <p>5 Q. Who secured those cars?</p> <p>6 A. Mr. Scappace.</p> <p>7 Q. Did he do that when you went out to take a</p> <p>8 look at the scene?</p> <p>9 A. I do not remember.</p> <p>10 Q. When the derailment first occurred, you're</p> <p>11 sitting in the engineer's seat. What did you do</p> <p>12 with the locomotive at that point immediately after</p> <p>13 the derailment occurred?</p> <p>14 A. If I remember correctly, I would have put</p> <p>15 the throttle off and put the independent on</p> <p>16 locomotive.</p> <p>17 Q. Did you shut the engine off?</p> <p>18 A. No.</p> <p>19 Q. At any point that morning did you shut the</p> <p>20 engine off?</p> <p>21 A. I do not believe so.</p> <p>22 Q. So you put the independent on, and that</p> <p>23 applied the brakes to the locomotive?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">30</p> <p>1 Q. Where was Mr. Scappace at that time? 2 A. I believe he was still sitting in his seat. 3 Q. And his seat would have been across the 4 locomotive from you on the left-hand side? 5 A. Yes. 6 Q. Were you long nose out or short nose out? 7 A. Short. 8 Q. Both of you could see your respective side 9 of the track from your windows, right, in your 10 seats? 11 A. If we looked out, yes. 12 Q. And it was his responsibility to watch the 13 left side of the train, which would be the east 14 side, and it was your responsibility to watch the 15 west side? 16 A. Yes. 17 Q. When did Mr. Scappace get out of the 18 locomotive the first time? 19 A. I do not remember. 20 Q. Did he get out before you and do a walk- 21 around and then come back? 22 A. I believe we both went back. 23 Q. How long were you at the pileup site before 24 you went back to your locomotive?</p>	<p style="text-align: right;">32</p> <p>1 A. Yes. 2 Q. Do you remember who you spoke to at all 3 from the company? 4 A. Mike Bump. 5 Q. Do you know what his position is? 6 A. Road foreman, I believe. 7 Q. Would that be your immediate superior? 8 A. Yes. 9 Q. And who else appeared besides Mike Bump? 10 A. From our company, I do not remember. 11 Q. What about at the scene; did anyone ask you 12 what happened from your company? 13 A. Yes. 14 Q. Who was that, Mike Bump? 15 A. Mike Bump. 16 Q. All right. Was Mike Bump taking notes, 17 writing things down as you told him? 18 A. I do not remember. 19 Q. Do you remember if he had a clipboard in 20 his possession or a pad of paper in his possession? 21 A. I don't remember. 22 Q. I understand. I'm just asking what you 23 recall. How long did you speak to Mike Bump? 24 A. Five minutes, ten minutes.</p>
<p style="text-align: right;">31</p> <p>1 A. I don't remember. 2 Q. Do you remember being out there for a long 3 period of time? 4 A. No, not a long period of time. 5 Q. Did you have any paperwork you needed to 6 complete as a result of the derailment, being the 7 engineer? 8 A. No. 9 Q. Is it your responsibility to return to the 10 engine and stay with the engine? 11 A. Yes. 12 Q. Is it Mr. Scappace's responsibility to 13 survey the damage and call in whatever help he 14 needed? 15 A. Yes. 16 Q. How much time passed between the derailment 17 and when people from your company started arriving 18 on the scene? 19 A. I don't remember. 20 Q. Do you remember who arrived? 21 A. I believe most of the people were from New 22 England Central. 23 Q. At some point in time did people from your 24 company arrive at the scene, do you recall?</p>	<p style="text-align: right;">33</p> <p>1 Q. Okay. Do you remember what you said to 2 him? 3 A. Yeah. Probably everything I said to you 4 more or less. 5 Q. What more and what less? 6 A. Probably asked me how fast I was going. He 7 probably asked me what happened, and I told him we 8 went on the ground. 9 Q. Okay. Were you surprised the train 10 derailed? 11 A. Yes. 12 Q. This was a new experience for you, correct? 13 A. Yes. 14 Q. Derailing on the mainline? 15 A. (Indicating.) 16 MR. DAVIDSON: Do you want to talk to 17 counsel? 18 THE WITNESS: Off the record, can I say 19 something off the record? 20 MR. DAVIDSON: I don't care. It makes 21 no difference to me. This is so informal. We're 22 not the formal kind of people. 23 THE WITNESS: But can I say it off the 24 record?</p>

<p style="text-align: right;">38</p> <p>1 A. No.</p> <p>2 Q. Are you trained in what you're supposed to</p> <p>3 do when a derailment occurs on the mainline by the</p> <p>4 company?</p> <p>5 A. Yes.</p> <p>6 Q. Has anyone from the company ever advised</p> <p>7 you that you are to give a complete statement as to</p> <p>8 what happened?</p> <p>9 A. I don't believe so.</p> <p>10 Q. Did anyone ever advise you that it was</p> <p>11 essential for determining the cause of a derailment</p> <p>12 that all the facts that you know of are related to</p> <p>13 the company?</p> <p>14 A. I don't believe so.</p> <p>15 Q. When was the last time that you looked back</p> <p>16 to check your train prior to the derailment?</p> <p>17 A. I believe it was just north of the curve</p> <p>18 where we went off.</p> <p>19 Q. Okay. When you say you went off, are we</p> <p>20 talking about 10.2, or are we talking about down by</p> <p>21 5.7?</p> <p>22 A. By 5.7.</p> <p>23 Q. Approximately what milepost would that have</p> <p>24 been?</p>	<p style="text-align: right;">40</p> <p>1 Q. I'm going to put a series of photographs in</p> <p>2 front of you. I'm going to ask you to take a look</p> <p>3 at them. Once you get done looking at them, will</p> <p>4 you just look up at me and let me he know when</p> <p>5 you're done. Take your time.</p> <p>6 A. I'm done.</p> <p>7 Q. Okay. As a result of taking a look at the</p> <p>8 eight photographs in front of you, do any of the</p> <p>9 photographs refresh your memory as to which</p> <p>10 locomotive was the lead locomotive that day?</p> <p>11 A. Yes.</p> <p>12 Q. Which photograph would that be?</p> <p>13 A. This one (indicating).</p> <p>14 Q. What does that tell you?</p> <p>15 A. 372 instead of the 370.</p> <p>16 Q. Had you ever operated 372 before?</p> <p>17 A. Yes.</p> <p>18 Q. Was there anything about the operation of</p> <p>19 372 that you found unusual?</p> <p>20 A. No.</p> <p>21 Q. These photographs that are in front of</p> <p>22 you -- there's eight photographs -- do they</p> <p>23 accurately depict how the scene looked when you got</p> <p>24 out of your locomotive and took a look at it that</p>
<p style="text-align: right;">39</p> <p>1 A. About 5.7.</p> <p>2 Q. Okay. In terms of time, how much time</p> <p>3 passed between the last time you checked and the</p> <p>4 derailment occurred?</p> <p>5 A. I might be guessing, but 15 seconds, 20</p> <p>6 seconds.</p> <p>7 Q. At 5.7, approximately, when the derailment</p> <p>8 occurred, was it foggy at that time?</p> <p>9 A. Yes, it was.</p> <p>10 Q. What was your visibility?</p> <p>11 A. Four or five car lengths.</p> <p>12 Q. So it's four or five car lengths through</p> <p>13 the fog as you came down when there was fog?</p> <p>14 A. Yes.</p> <p>15 Q. So we're talking somewhere between 240 to</p> <p>16 300 feet visibility?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know who David Bougie is?</p> <p>19 A. I believe he's on the track department.</p> <p>20 Q. Did you ever talk to him about the</p> <p>21 derailment?</p> <p>22 A. I don't believe so.</p> <p>23 MR. DAVIDSON: These are the photos from</p> <p>24 yesterday, the remaining ones.</p>	<p style="text-align: right;">41</p> <p>1 day?</p> <p>2 A. Yes.</p> <p>3 MR. WRIGHT: Can we take a break?</p> <p>4 MR. DAVIDSON: Let's go off the record.</p> <p>5 (Discussion held off the record.)</p> <p>6 MR. DAVIDSON: Back on the record.</p> <p>7 Q. Mr. Kari, we had some earlier testimony</p> <p>8 regarding which locomotive you were operating that</p> <p>9 day, and were you using a document to refresh your</p> <p>10 memory as to which locomotive that was?</p> <p>11 A. Yes.</p> <p>12 Q. And that was the consist?</p> <p>13 A. Yes.</p> <p>14 Q. Which for whatever reason I never marked as</p> <p>15 an exhibit.</p> <p>16 MR. DAVIDSON: Could we mark this as an</p> <p>17 exhibit, please.</p> <p>18 (Marked, Exhibit 29, consist.)</p> <p>19 Q. Sir, this document that has been marked as</p> <p>20 Exhibit 29, which is the consist, is that a document</p> <p>21 you generate or is that given to you by the company?</p> <p>22 A. It's given to the conductor by the company.</p> <p>23 Q. Okay. It's given to the conductor. And</p> <p>24 you had no involvement in terms of listing out those</p>

<p>54</p> <p>1 A. I do not remember. 2 Q. Do you currently work with him? 3 A. No, I don't. 4 Q. Do you remember the last time you worked 5 with him? 6 A. Maybe three months ago. 7 Q. Where did you work with him three months 8 ago? 9 A. On WJED. 10 Q. They're back operating over the line? 11 A. Yes, they are. 12 Q. When did they let you back on? 13 A. I believe it was about a year and a half 14 after. 15 Q. While you were not working for a year and a 16 half on that run, where were you working in the 17 system? 18 A. East Deerfield. 19 Q. Doing what? 20 A. Switcher or local. 21 Q. Did you suffer any financial consequences 22 as a result of not being able to make the run down 23 at WJED? 24 A. I don't have the books on what they made,</p>	<p>56</p> <p>1 Q. Did anyone ever talk to you about that? 2 A. No, I don't believe so. 3 Q. As you're traveling down the track between 4 10.18 and 5.7, did you inspect your car, your train, 5 excuse me, at any time other than when you're going 6 through the curves? 7 A. I don't believe so. 8 Q. Is there a mirror outside your window? 9 A. No, there is not. 10 Q. You have a window right to your right, 11 correct? 12 A. Yes, I do. 13 Q. At any time did you put your head out the 14 window and take a look back to make sure everything 15 was fine? 16 A. On the curves, yes. 17 Q. Just on the curves? 18 A. Yes. 19 Q. What about Mr. Scappace? 20 A. I don't remember. 21 Q. You don't remember? 22 A. No. 23 Q. Because you're focusing on operating the 24 train, correct?</p>
<p>55</p> <p>1 WJED. I do not know. 2 Q. I'm asking you personally. Did you suffer 3 financially as a result of being banned from NECR? 4 A. I didn't make as much money as if I had 5 owned that job. 6 Q. Did anyone compensate you for the 7 difference you were making and what you weren't 8 making? 9 A. No. 10 Q. Was your visibility at any time between 11 milepost 10.16 and mile post 5.7 reduced to less 12 than one mile? 13 A. Less than one mile, yes, at times. 14 Q. Approximately how much of that time, of 15 that run? 16 A. I do not remember. 17 Q. Is there any reason why you didn't stop 18 your train and put a marker on the end of the train 19 because your visibility was less than a half a mile? 20 A. There is a marker on there. 21 Q. There was a marker on there? 22 A. Yes. 23 Q. Was it active and working? 24 A. I believe so, yes.</p>	<p>57</p> <p>1 A. Yes. 2 Q. And you have crossings coming up? 3 A. Yes. 4 Q. And you have curves you have to go through? 5 A. Yes. 6 Q. There's no mirror on the left side of the 7 train that you can see going back, correct? 8 A. I don't believe so, no. 9 Q. So when you looked back, could you see back 10 to the sixth car? 11 A. I don't believe so. 12 Q. Is there any rule that you know of, either 13 your safety rules or the operating rules for the 14 NECR, which require you to slow down the train to a 15 speed sufficient in order to do a running inspection 16 as you were doing on the way down? 17 A. Repeat that again, please. 18 MR. DAVIDSON: Can you read it back, 19 please. 20 (Question read.) 21 A. A running inspection I believe is as you're 22 leaving the yard. 23 Q. An inspection as you're running down the 24 line. Let's do it that way instead. Your moving</p>

(Pages 58 to 61)

<p>58</p> <p>1 inspections.</p> <p>2 A. You look back and you look at the train.</p> <p>3 Q. Was there any doubt in your mind as you</p> <p>4 were traveling down and could not see the back of</p> <p>5 your train whether or not your train was still on</p> <p>6 the track?</p> <p>7 A. Was there any doubt?</p> <p>8 Q. Yes.</p> <p>9 A. No, there was no doubt.</p> <p>10 Q. Was there any uncertainty that you had that</p> <p>11 the cars behind you were still in the track, the</p> <p>12 ones you couldn't see?</p> <p>13 A. No uncertainty, no.</p> <p>14 Q. Did you ever file any written reports</p> <p>15 concerning this derailment?</p> <p>16 A. I don't believe I have, no.</p> <p>17 Q. Did you take exception to any of the</p> <p>18 testimony that you read that was provided by the</p> <p>19 company as to the cause of the derailment?</p> <p>20 A. I don't believe so, no.</p> <p>21 Q. Did you take any exception as to the</p> <p>22 testimony that your company provided that you</p> <p>23 reviewed in the transcript as to your actions during</p> <p>24 the derailment?</p>	<p>60</p> <p>1 CERTIFICATE OF COURT REPORTER</p> <p>2 I, Kathleen Mullen Silva, Registered</p> <p>3 Professional Reporter and Certified Realtime</p> <p>4 Reporter, do certify that the deposition of A. PETER</p> <p>5 KARI, in the matter of New England Central Railroad,</p> <p>6 Inc. v. Springfield Terminal Railway Company, et</p> <p>7 al., on January 12, 2007, was stenographically</p> <p>8 recorded by me; that the witness provided</p> <p>9 satisfactory evidence of identification, as</p> <p>10 prescribed by Executive Order 455 (03-13) issued by</p> <p>11 the Governor of the Commonwealth of Massachusetts,</p> <p>12 before being sworn by me, a Notary Public in and for</p> <p>13 the Commonwealth of Massachusetts; that the</p> <p>14 transcript produced by me is a true and accurate</p> <p>15 record of the proceedings to the best of my ability;</p> <p>16 that I am neither counsel for, related to, nor</p> <p>17 employed by any of the parties to the above action;</p> <p>18 and further that I am not a relative or employee of</p> <p>19 any attorney or counsel employed by the parties</p> <p>20 thereto, nor financially or otherwise interested in</p> <p>21 the outcome of the action.</p> <p>22</p> <p>23 _____ January 22, 2007</p> <p>24 Kathleen Mullen Silva, RPR, CRR</p>
<p>59</p> <p>1 A. No, I don't.</p> <p>2 Q. Was there anything in that transcript that</p> <p>3 you desired to change or correct?</p> <p>4 A. No, I don't.</p> <p>5 Q. So that transcript is accurate, to the best</p> <p>6 of your memory?</p> <p>7 A. To the best of my memory, yes.</p> <p>8 MR. DAVIDSON: Thank you for very much</p> <p>9 for coming in. I'm all done. Nice meeting you.</p> <p>10 (12:57 p.m., proceedings adjourned.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>61</p> <p>1 INDEX</p> <p>2</p> <p>3 EXAMINATIONS</p> <p>4 A. PETER KARI</p> <p>5 BY MR. DAVIDSON 3</p> <p>6</p> <p>7 EXHIBITS MARKED</p> <p>8 29, consist 41</p> <p>9 30A-H, photographs 42</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

EXHIBIT 16

Volume 1, Pages 1- 101

Exhibits: 31-32

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CENTRAL RAILROAD, INC.,

Plaintiff

v.

Docket No. 04-30235-MAP

SPRINGFIELD TERMINAL RAILWAY

COMPANY and BOSTON AND MAINE

CORPORATION,

Defendants

DEPOSITION OF JOSEPH C. SCAPPACE, JR.

Friday, January 12, 2007, 1:12 p.m.

Law Office of Robert H. D'Auria

41 North Road, Suite 205

Bedford, Massachusetts 01730

----Reporter: Kathleen Mullen Silva, RPR, CRR----

Beacon Hill Court Reporting, Inc.

807 Main Street, 2nd Floor

Worcester, Massachusetts 01610

508.753.9286

(Pages 18 to 21)

<p style="text-align: right;">18</p> <p>1 Q. Other than reading that today, have you had 2 an opportunity to review that consist any time since 3 July 3, 2004? 4 A. No. 5 Q. Did you review that consist prior to giving 6 your testimony and the prior disciplinary hearing 7 regarding this derailment? 8 A. No. 9 Q. How heavy was your train that day? 10 A. I don't remember. 11 Q. Would you like to look at the consist and 12 see if it refreshes your memory? 13 A. It says 1,609 for total. 14 Q. That would be 1,609 ton, right? 15 A. 1,609 tons. That doesn't seem right, 16 though. 17 Q. Why is that? 18 A. Well, just math, that's all. 19 Q. What specifically? 20 A. Well, I'd have to get a calculator to 21 figure it out, but for all the loads, we usually 22 figure about 125 tons per car, and for every empty 23 30 tons per car. 24 Q. How much do you figure for the locomotives?</p>	<p style="text-align: right;">20</p> <p>1 the operating class, that's it. 2 Q. So you never held any other position in any 3 other department? 4 A. No. 5 Q. What were the weather conditions at White 6 River Junction when you were in the yard making up 7 your train? 8 A. Well, as far as -- it wasn't range out. It 9 wasn't a clear day. It was ground fog, river fog. 10 Q. Was it river fog in the yard? 11 A. Yes. 12 Q. Describe for us what you mean by "river 13 fog." 14 A. Well, it was morning fog. It was going to 15 burn off when the sun came up. The sun wasn't quite 16 up yet at 5:00. 17 Q. How far could you see in this fog in the 18 yard? 19 A. Oh, I don't remember. You can see a ways. 20 It wasn't pea soup thick fog, if that's what you 21 mean. Just morning fog, ground fog. 22 Q. If you stood at the head end of your train 23 and looked to the back end of your train not knowing 24 which direction your train was in the yard, could</p>
<p style="text-align: right;">19</p> <p>1 A. Locomotives don't -- well, we don't enter 2 that in. 3 Q. So when you say "1,609 ton," we're talking 4 about the weight of the rail cars? 5 A. Train, not the locomotives, just the train. 6 Q. Do you know how much the locomotives weigh, 7 approximately? 8 A. No. 9 Q. When you went through qualification and 10 recertification as a conductor, was it ever 11 discussed with you that the weight of the 12 locomotives and the factor they may have in stopping 13 the train? 14 A. No. 15 Q. So were you ever taught or schooled in any 16 of the classes you took as to the calculation that 17 you need to make roughly for stopping the train with 18 a load in locomotives? 19 A. No. 20 Q. Have you ever been a certified engineer? 21 A. No. 22 Q. Have you ever held a position other than 23 train man or conductor with the railroad? 24 A. Train man, flag man, conductor, but within</p>	<p style="text-align: right;">21</p> <p>1 you see the rear end of your train? 2 A. No. 3 Q. How far back could you see approximately? 4 A. I don't remember, but I don't think I'd see 5 the tail end of it. 6 Q. Could you see the middle section of it? 7 A. Yes. 8 Q. How many rail cars were on your train that 9 day? 10 A. Nineteen. 11 Q. So when you say "the middle," you could see 12 approximately nine and a half cars back? 13 A. Roughly. 14 Q. And that's including the locomotives? 15 A. I don't remember. You can more or less 16 just see the outline of the cars. You couldn't see 17 anything in particular. 18 Q. The outline of the cars in the middle 19 section of the train? 20 A. From where I am to where the middle was and 21 after that, the rest would just vanish. 22 Q. Do you remember what time you pulled out of 23 the yard that day? 24 A. It was about 6:30, somewhere in that area.</p>

(Pages 34 to 37)

<p style="text-align: right;">34</p> <p>1 Q. When it first derailed.</p> <p>2 A. No.</p> <p>3 Q. Do you know where the derailment piled up?</p> <p>4 A. Yes.</p> <p>5 Q. Where?</p> <p>6 A. At Hartland.</p> <p>7 Q. To the best of your memory, what milepost</p> <p>8 did it pile up at?</p> <p>9 A. 5.6, in that area, where the Hartland site</p> <p>10 is.</p> <p>11 Q. 5.6?</p> <p>12 A. Yeah, 5.6, in that area of Hartland itself.</p> <p>13 Q. When you say in that area, plus or minus?</p> <p>14 A. Hartland, Hartland station, that's what</p> <p>15 it's called. That's the point.</p> <p>16 Q. When did you first realize that the train</p> <p>17 was experiencing a derailment?</p> <p>18 A. When we heard the air brakes apply. It's</p> <p>19 called when the air dumps. Loss of air, the brakes</p> <p>20 go on, and we can hear that.</p> <p>21 Q. Did you feel anything?</p> <p>22 A. At that time we did, yes.</p> <p>23 Q. What did you feel?</p> <p>24 A. We felt the train slowing down because the</p>	<p style="text-align: right;">36</p> <p>1 started dumping, you realized what it was?</p> <p>2 A. Mm-hmm.</p> <p>3 Q. Then you spun around in your chair?</p> <p>4 A. Well, first I looked at Pete and I said,</p> <p>5 "Now we're in trouble," and I turned around and</p> <p>6 looked and there's a box car heading east. Or I</p> <p>7 said something like, "Now what?" That's what I</p> <p>8 said, "Now what?" I turned around to take a look</p> <p>9 and we had a derailment back there.</p> <p>10 Q. What happened once the locomotive came to a</p> <p>11 stop?</p> <p>12 A. What happened to what?</p> <p>13 Q. What happened next that you recall?</p> <p>14 A. We reported it to the dispatcher.</p> <p>15 Q. When you say "we," who reported it?</p> <p>16 A. The crew, Pete and I.</p> <p>17 Q. You both called on the radio?</p> <p>18 A. No. He got on the radio and reported we</p> <p>19 had a derailment.</p> <p>20 Q. Who did?</p> <p>21 A. Pete, I believe. I don't remember if it</p> <p>22 was him or me. One of us did, because that's what</p> <p>23 we're supposed to do.</p> <p>24 Q. Isn't it your responsibility as a conductor</p>
<p style="text-align: right;">35</p> <p>1 brakes were applied.</p> <p>2 Q. How far did the train travel from the time</p> <p>3 you first felt the air dump to the time that it</p> <p>4 stopped?</p> <p>5 A. I do not know.</p> <p>6 Q. Can you estimate it for me?</p> <p>7 A. I don't remember.</p> <p>8 Q. What were you doing when the brakes</p> <p>9 applied?</p> <p>10 A. Looking back to see what was going on.</p> <p>11 Q. How were you looking back?</p> <p>12 A. I turned around in the seat, looked out the</p> <p>13 rear window.</p> <p>14 Q. What did you see?</p> <p>15 A. I saw boxcars coming all different ways.</p> <p>16 Primarily east. We were heading south, the box car</p> <p>17 was heading east. I knew something was wrong.</p> <p>18 Q. How much time passed between the time the</p> <p>19 air brakes dumped and the time the train came to a</p> <p>20 stop?</p> <p>21 A. I don't know.</p> <p>22 Q. Would you estimate it for me?</p> <p>23 A. I don't remember.</p> <p>24 Q. But it was enough time that when they first</p>	<p style="text-align: right;">37</p> <p>1 to make that call?</p> <p>2 A. It's the responsibility of the crew.</p> <p>3 Q. I understand. You're in charge of the crew</p> <p>4 being the conductor of the movement of the train?</p> <p>5 A. Engineers and conductors are equally</p> <p>6 responsible for the safe operation of their train.</p> <p>7 Q. Understood. But in the pecking order --</p> <p>8 excuse me, there's not a question before you.</p> <p>9 In terms of who's ultimately responsible</p> <p>10 for movement of the train, it's the conductor,</p> <p>11 correct?</p> <p>12 A. In what respect?</p> <p>13 Q. In the movement of the train, you are</p> <p>14 ultimately responsible?</p> <p>15 A. Yes.</p> <p>16 Q. You say when the train goes and when it</p> <p>17 stops?</p> <p>18 A. Yes.</p> <p>19 Q. After whomever reported this derailment to</p> <p>20 dispatch, what then happened?</p> <p>21 A. I then went back to inspect damage.</p> <p>22 Q. Did you go by yourself or did you go with</p> <p>23 Peter?</p> <p>24 A. I went by myself first. He was manning the</p>

(Pages 62 to 65)

<p style="text-align: right;">62</p> <p>1 stuff?</p> <p>2 A. My van, my truck, a bag.</p> <p>3 Q. Have you checked your van, your truck or</p> <p>4 your bag for a copy of the original of this document</p> <p>5 any time in the last, say, six months?</p> <p>6 A. No.</p> <p>7 Q. Has anyone asked you to?</p> <p>8 A. No.</p> <p>9 Q. Has anyone asked you to produce the</p> <p>10 original version of that document, Exhibit 22?</p> <p>11 A. No.</p> <p>12 Q. Has anyone asked you to look for the</p> <p>13 original of the July 3 version of that document?</p> <p>14 A. You just asked me that.</p> <p>15 MR. WRIGHT: Yeah.</p> <p>16 Q. I'm asking has anyone asked you to look for</p> <p>17 it after you wrote this document?</p> <p>18 A. No.</p> <p>19 Q. Is there anyone that you can think of that</p> <p>20 you would have given that July 3 version of that</p> <p>21 document, the original document -- not the copies?</p> <p>22 A. No.</p> <p>23 Q. You're at the scene of the derailment. I</p> <p>24 want to focus you back to July 3 about 7:00 in the</p>	<p style="text-align: right;">64</p> <p>1 Q. He was your boss, correct?</p> <p>2 A. No. He was a road foreman.</p> <p>3 Q. He worked for what department?</p> <p>4 A. Operating.</p> <p>5 Q. Who was your immediate supervisor?</p> <p>6 A. Mr. Galvis.</p> <p>7 Q. Who was his supervisor?</p> <p>8 A. I don't remember at the time.</p> <p>9 Q. What was Mike Bump's job at the site when</p> <p>10 you got there? What was his responsibility?</p> <p>11 A. Find out -- investigate what happened, get</p> <p>12 information. I don't know if he downloaded the</p> <p>13 engines or -- I don't remember if Mr. Williams</p> <p>14 showed up on the scene. I think he did. I don't</p> <p>15 remember.</p> <p>16 Q. Who's Mr. Williams?</p> <p>17 A. Another road foreman of engines.</p> <p>18 Q. Does he have a first name?</p> <p>19 A. Mark.</p> <p>20 Q. Who did you talk to about the occurrence of</p> <p>21 the derailment? Did you talk to Mike Bump about it?</p> <p>22 A. Yes.</p> <p>23 Q. Was he taking notes as you were talking to</p> <p>24 him?</p>
<p style="text-align: right;">63</p> <p>1 morning. Did someone from your company appear at</p> <p>2 the derailment site at some point that morning?</p> <p>3 A. Yes.</p> <p>4 Q. Who was that?</p> <p>5 A. Walt Rice.</p> <p>6 Q. Who is Walt Rice?</p> <p>7 A. Section supervisor I believe is his title.</p> <p>8 Q. Approximately what time did he show up?</p> <p>9 A. I do not remember.</p> <p>10 Q. Did you have a conversation with him?</p> <p>11 A. Oh, yeah.</p> <p>12 Q. What did you talk about?</p> <p>13 A. He told me how far back it was.</p> <p>14 Q. How far back was that?</p> <p>15 A. Five miles, roughly.</p> <p>16 Q. Were you surprised about that?</p> <p>17 A. Yes.</p> <p>18 Q. What else did he tell you?</p> <p>19 A. I don't remember. We talked. Mr. Bump</p> <p>20 showed up.</p> <p>21 Q. What's Mr. Bump's first name?</p> <p>22 A. Mike.</p> <p>23 Q. Who's Mike Bump?</p> <p>24 A. At that time he was a road foreman.</p>	<p style="text-align: right;">65</p> <p>1 A. I don't remember.</p> <p>2 Q. Do you remember him having a clipboard or a</p> <p>3 pad of paper with him?</p> <p>4 A. No. I don't remember.</p> <p>5 Q. Did anyone ever ask you to provide a</p> <p>6 written statement?</p> <p>7 A. Just the accident report.</p> <p>8 Q. Aside from the report, did anyone ask you</p> <p>9 to provide a verbatim written statement?</p> <p>10 A. No.</p> <p>11 Q. Did anyone ever ask you to provide a</p> <p>12 recorded statement?</p> <p>13 A. No.</p> <p>14 Q. Did anyone ever call you after the</p> <p>15 derailment from the company or from an investigator</p> <p>16 talking to you about this over the phone?</p> <p>17 A. No.</p> <p>18 Q. So as far as you understand, there is no</p> <p>19 recorded statement from you in either writing or</p> <p>20 electronically regarding the happening of the</p> <p>21 derailment?</p> <p>22 A. At the hearing we attended.</p> <p>23 Q. Just on your statement, not your testimony.</p> <p>24 A. No.</p>

(Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 A. Yes, I do.</p> <p>2 Q. Do you remember testifying at your hearing</p> <p>3 it was approximately four to five car lengths you</p> <p>4 could see?</p> <p>5 A. That was back, not forward.</p> <p>6 Q. I'm going to point you to page 39 of a</p> <p>7 document entitled, "Hearing, A.P. Kari" and your</p> <p>8 name is underneath that, August 9, 2004. First I'm</p> <p>9 going to ask you, is that a copy of the -- does that</p> <p>10 look to you to be a copy of the transcript that you</p> <p>11 reviewed for your testimony here today? I will</p> <p>12 represent to you that was given to us by the</p> <p>13 company.</p> <p>14 A. It looks like it, yes.</p> <p>15 Q. Would you turn to page 39. Strike that for</p> <p>16 a second. Hold on. I think I'm at the wrong place.</p> <p>17 Go to page 34. Do you recall being asked by</p> <p>18 Mr. Bergeron the question, "Do the tracks running</p> <p>19 from White River to East Deerfield follow the</p> <p>20 Connecticut River, and this is why they call it the</p> <p>21 Conn. River?" And you answered, "Yes, it is." Do</p> <p>22 you remember that?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. Do you remember then being asked, "And</p>	<p style="text-align: right;">84</p> <p>1 testimony that I just read to you? Yes or no.</p> <p>2 A. I do not remember, because that's what I</p> <p>3 was referring to when I said I can see back four or</p> <p>4 five cars, four or five car lengths, that's what I</p> <p>5 was referring to, the train, not in front of me.</p> <p>6 I'm sorry if it doesn't reflect in that, but that's</p> <p>7 what I was describing, how far back I could see.</p> <p>8 Q. That's what you meant, but that's not what</p> <p>9 your testimony was, correct, what I just read?</p> <p>10 A. I don't know.</p> <p>11 Q. Well, I'm going to ask you to read to</p> <p>12 yourself --</p> <p>13 A. I just told you what I was referring to.</p> <p>14 Q. I understand what you're referring to. But</p> <p>15 I want to make sure that we're clear that's not what</p> <p>16 your testimony was back at the hearing during the</p> <p>17 course of this questioning, was it? It doesn't show</p> <p>18 up there that that's what you were referring to?</p> <p>19 That's what I'm asking.</p> <p>20 A. No, I guess it doesn't.</p> <p>21 Q. Okay.</p> <p>22 A. But that's what I was referring -- when I</p> <p>23 gave a count like that, I was referring to what I</p> <p>24 could see in back of me. That's what I was</p>
<p style="text-align: right;">83</p> <p>1 foggy conditions are pretty much a common sight."</p> <p>2 And you responded, "Yes, they are." Do you remember</p> <p>3 that?</p> <p>4 A. Mm-hmm.</p> <p>5 Q. And it says, "On the date in question you</p> <p>6 indicated in the incident report that you filled out</p> <p>7 that day you had foggy conditions." And you said,</p> <p>8 "Yes, we did." Do you remember that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Do you remember being asked, "Approximately</p> <p>11 how many or what was the visibility, let's say in</p> <p>12 car lengths?" And you said, "Four, five at most."</p> <p>13 And he says, "Four or five car lengths?" And you</p> <p>14 said, "You could see clearly, yes, somewhat clear.</p> <p>15 Like I said, it was a patchy fog on and off." Do</p> <p>16 you remember saying that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Do you remember saying anywhere within that</p> <p>19 testimony where you qualified it as looking</p> <p>20 backwards?</p> <p>21 A. That's what I was referring to, though.</p> <p>22 That's what I was referring to.</p> <p>23 Q. Did you testify to that at your hearing,</p> <p>24 that's what you're referring to during that</p>	<p style="text-align: right;">85</p> <p>1 referring to.</p> <p>2 MR. DAVIDSON: Okay. Can we mark this</p> <p>3 as exhibit whatever the next one is.</p> <p>4 (Marked, Exhibit 31, transcript.)</p> <p>5 Q. Now, you've had a chance to take a look at</p> <p>6 your testimony as to that issue. Does that refresh</p> <p>7 your memory as to how far in front of you you could</p> <p>8 see that day?</p> <p>9 A. We had good visibility in front, yes.</p> <p>10 Q. Okay. Can you estimate for us how many car</p> <p>11 lengths you had in front of you for visibility?</p> <p>12 A. I don't remember.</p> <p>13 Q. If you describe your visibility looking</p> <p>14 forward as good, how would you describe your</p> <p>15 visibility looking backwards?</p> <p>16 A. You can see cars.</p> <p>17 Q. Was it poor, was it good, was it fair?</p> <p>18 A. As far as...</p> <p>19 Q. Visibility.</p> <p>20 A. Well, I said, you know, you could only see</p> <p>21 back four or five cars.</p> <p>22 Q. Okay. I understand that's how many cars</p> <p>23 you could see back. But how would you qualify that</p> <p>24 or describe it beyond that, in terms of good, fair,</p>

(Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 poor?</p> <p>2 A. Fair, because there was still patchy fog</p> <p>3 and the sun was still coming up.</p> <p>4 Q. So there were times that the visibility --</p> <p>5 A. Hazy.</p> <p>6 Q. So there were times as you were coming down</p> <p>7 the line that the visibility in front of you was as</p> <p>8 bad as it is behind you, but then it improves again</p> <p>9 and then it deteriorates?</p> <p>10 A. It was patchy fog, yes.</p> <p>11 Q. Just for the record, I'm trying to get what</p> <p>12 you saw.</p> <p>13 MR. DAVIDSON: Off the record.</p> <p>14 (Discussion held off the record.)</p> <p>15 Q. Did you advise dispatch that there was fog</p> <p>16 through that area as you went through there?</p> <p>17 A. No.</p> <p>18 Q. Now, you said earlier that the visibility</p> <p>19 was somewhat restricted. Aren't you required by</p> <p>20 Rule 6.21 to report that to the train dispatcher?</p> <p>21 It's a yes or no, sir.</p> <p>22 A. I can't answer that question.</p> <p>23 Q. Okay. If the sixth rail car had derailed</p> <p>24 and it was being dragged down the track and the</p>	<p style="text-align: right;">88</p> <p>1 This is the GCOR rules I've been referring to as</p> <p>2 I've been speaking today, so we have them</p> <p>3 identified.</p> <p>4 (Marked, Exhibit 32, GCOR rules.)</p> <p>5 Q. Do you know who Roger Bergeron is?</p> <p>6 A. Yes, I do.</p> <p>7 Q. How do you know Mr. Bergeron?</p> <p>8 A. I believe I was down in Lawrence at the</p> <p>9 same time he was working there.</p> <p>10 Q. What was his position with the railroad at</p> <p>11 that time, if you recall?</p> <p>12 A. He was section foreman, I believe. I guess</p> <p>13 he's gone up the ladder since then.</p> <p>14 Q. All right. Your dad was a conductor,</p> <p>15 right?</p> <p>16 A. Yes, sir, he was.</p> <p>17 Q. Did you guys work off in different</p> <p>18 territories or did you work in the same territories?</p> <p>19 A. Yes.</p> <p>20 Q. Both?</p> <p>21 A. Yes.</p> <p>22 Q. At what point in your career did you start</p> <p>23 working in different territories?</p> <p>24 A. We didn't.</p>
<p style="text-align: right;">87</p> <p>1 trucks or the wheels on the trucks that are to the</p> <p>2 east are running over the edge of the ties, wouldn't</p> <p>3 that rail car be out of line with the rest of the</p> <p>4 cars?</p> <p>5 A. No.</p> <p>6 Q. It wouldn't?</p> <p>7 A. No.</p> <p>8 Q. So a rail car that its trucks --</p> <p>9 A. No.</p> <p>10 Q. -- the wheels are a foot to eighteen inches</p> <p>11 from the rail being dragged down the line, it</p> <p>12 wouldn't be out of line with the rest of the rail</p> <p>13 cars?</p> <p>14 A. No. Now --</p> <p>15 Q. No, no, nothing further. "No" is fine.</p> <p>16 Thank you.</p> <p>17 Don't the rules require you to take the</p> <p>18 most safe course of action at all times?</p> <p>19 A. Yes.</p> <p>20 Q. And that both appears in the GCOR rules as</p> <p>21 well as in your safety rules, correct?</p> <p>22 A. Yes.</p> <p>23 MR. DAVIDSON: For the purposes of</p> <p>24 today, I'd like to have this marked as Exhibit 32.</p>	<p style="text-align: right;">89</p> <p>1 Q. So you always overlapped?</p> <p>2 A. No. I don't understand your question.</p> <p>3 Q. When did your dad retire from the railroad?</p> <p>4 A. He retired '85. 1985, just before the</p> <p>5 strike in '86, yeah.</p> <p>6 Q. In 1977, do you remember being disciplined</p> <p>7 for operating without authority on the Maine and</p> <p>8 Hoosac?</p> <p>9 A. Yes.</p> <p>10 Q. What was your discipline for that?</p> <p>11 A. I got a little reprimand, I believe. I</p> <p>12 wasn't the conductor.</p> <p>13 Q. I understand. You were the train man?</p> <p>14 A. That's right.</p> <p>15 Q. You were actually the head-end brake man.</p> <p>16 A. Mm-hmm.</p> <p>17 Q. What about July 9, 1984 when you were</p> <p>18 working in Local LA-1, do you remember being</p> <p>19 involved in an incident where you were disciplined?</p> <p>20 A. A derailment.</p> <p>21 Q. July 9, 1984.</p> <p>22 A. '84, that was a derailment, Georgia-</p> <p>23 Pacific.</p> <p>24 Q. Correct.</p>

(Pages 94 to 97)

<p style="text-align: right;">94</p> <p>1 the drug test and why it would be noted as non-FRA 2 required? 3 A. No. What date? 4 Q. August 6, 1999 you were coming back to work 5 after being injured apparently. 6 A. '99. 7 Q. It would be the summer of '99. 8 A. That would be the stunt. 9 Q. Do you remember why they wanted you to have 10 a drug test that wasn't FRA required? 11 A. Random. That's all I can say. 12 Q. I understand they're entitled to do it 13 under the FRA guidelines randomly, but this says 14 non-FRA. 15 A. I have no idea. 16 Q. Do you recall on 10/17/97 that you were 17 suspended for a day on train LAED out of Lawrence 18 when you failed to have your NORAC rule book in your 19 possession? 20 A. Yes. 21 Q. What about November 1, 1996, you were 22 shoving a Mount Tom coal train VMT-65 and you shoved 23 it off the end of track number 1? 24 A. Yes.</p>	<p style="text-align: right;">96.</p> <p>1 A. No. 2 Q. On November 17, 2003, approximately nine 3 months before this derailment, do you remember 4 receiving a three-day suspension for failure to 5 properly perform your duties while employed as a 6 conductor on train WJED 06 on 10/6/03 at Claremont, 7 New Hampshire? 8 A. Yes. 9 Q. And in fact, you placed the wrong car at 10 the Rymes, R-y-m-e-s, siding, correct? 11 A. Yes. 12 Q. Were you ever assessed or fined any monies 13 as a result of damaging the number 1 power switch on 14 February 9, 1996 in addition to your two-week 15 suspension? 16 A. No. 17 Q. Were you ever assessed any monies by the 18 company during any of the incidents which resulted 19 in discipline where damage was done? 20 A. No. 21 Q. Do you know why in January of 1997 you were 22 ordered to make an appointment with a rules examiner 23 to review the operating rules on or about April 1, 24 1997 in which you received a reprimand?</p>
<p style="text-align: right;">95</p> <p>1 Q. Do you remember getting a ten-day 2 suspension for that? 3 A. Yes. 4 Q. And what about January 27, 1996, train 5 LAED, you damaged the power switch. 6 A. Yes. 7 Q. Can you tell us what happened on that? 8 A. Track was misaligned. 9 Q. It was your responsibility to make sure it 10 was aligned correctly, right? 11 A. Yes. 12 Q. And you got two weeks suspension for that? 13 A. Yes. 14 Q. Are there any other dates I've missed where 15 you have been subject to discipline by the 16 company -- 17 A. No. 18 Q. -- that you recall? 19 A. Not that I recall, no. 20 Q. Have you ever read your personnel file at 21 the company? 22 A. No. 23 Q. Have you ever been provided an opportunity 24 to read it?</p>	<p style="text-align: right;">97</p> <p>1 A. What was the date? 2 Q. It was January 28, 1997 -- 1977. 3 A. '77? 4 Q. 1977. Can you remember back that far? 5 A. That was the Pownal incident, I believe. I 6 believe. 7 Q. What were you and Mr. Kari doing 8 immediately before the emergency brake applied to 9 the train before the derailment? When I say 10 "derailment," I mean the dumping of the cars. 11 A. Looking ahead. 12 Q. Were you talking? 13 A. I don't remember. I don't remember. 14 Q. Did either one of you have a radio on, 15 other than the radio to communicate with? 16 A. No. 17 Q. Was there any other noise on the train, 18 other than noise that comes from the train when 19 you're operating it? 20 A. No. 21 Q. Did you feel any tugging or bumping as the 22 train passed over the bridge immediately before the 23 derailment? 24 A. No.</p>

(Pages 98 to 101)

98	100
1 Q. Did you feel any tugging or any unusual	1 INDEX
2 sensations when you made it over the crossings?	2
3 A. No.	3 EXAMINATIONS
4 MR. DAVIDSON: I believe that's all I	4 JOSEPH C. SCAPPACE, JR.
5 have for you, sir. Thank you for coming down.	5 BY MR. DAVIDSON 3
6 (3:13 p.m., proceedings adjourned.)	6
7	7 EXHIBITS MARKED
8	8 31, transcript 85
9	9 32, GCOR rules 88
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24

99	101
1 CERTIFICATE OF COURT REPORTER	WITNESS: JOSEPH C. SCAPPACE, JR.
2 I, Kathleen Mullen Silva, Registered	CASE: New England Central Railroad, Inc. v. Springfield
3 Professional Reporter and Certified Realtime	Terminal Railway Company, et al.
4 Reporter, do certify that the deposition of JOSEPH	SIGNATURE PAGE/ERRATA SHEET
5 C. SCAPPACE, JR., in the matter of New England	PAGE LINE CHANGE OR CORRECTION AND REASON
6 Central Railroad, Inc. v. Springfield Terminal	
7 Railway Company, et al., on January 12, 2007, was	
8 stenographically recorded by me; that the witness	
9 provided satisfactory evidence of identification, as	
10 prescribed by Executive Order 455 (03-13) issued by	
11 the Governor of the Commonwealth of Massachusetts,	
12 before being sworn by me, a Notary Public in and for	
13 the Commonwealth of Massachusetts; that the	
14 transcript produced by me is a true and accurate	
15 record of the proceedings to the best of my ability;	
16 that I am neither counsel for, related to, nor	
17 employed by any of the parties to the above action;	
18 and further that I am not a relative or employee of	
19 any attorney or counsel employed by the parties	
20 thereto, nor financially or otherwise interested in	
21 the outcome of the action.	
22	I have read the transcript of my deposition taken January 12,
23	2007. Except for any corrections or changes noted above I
24 Kathleen Mullen Silva, RPR, CRR	hereby subscribe to the transcript as an accurate record of the
	statements made by me.
	Signed under the pains and penalties of perjury.
	DATE
	Deponent, JOSEPH C. SCAPPACE, JR.

EXHIBIT 17

06/07 2004 16:10 FAX

0002

000168

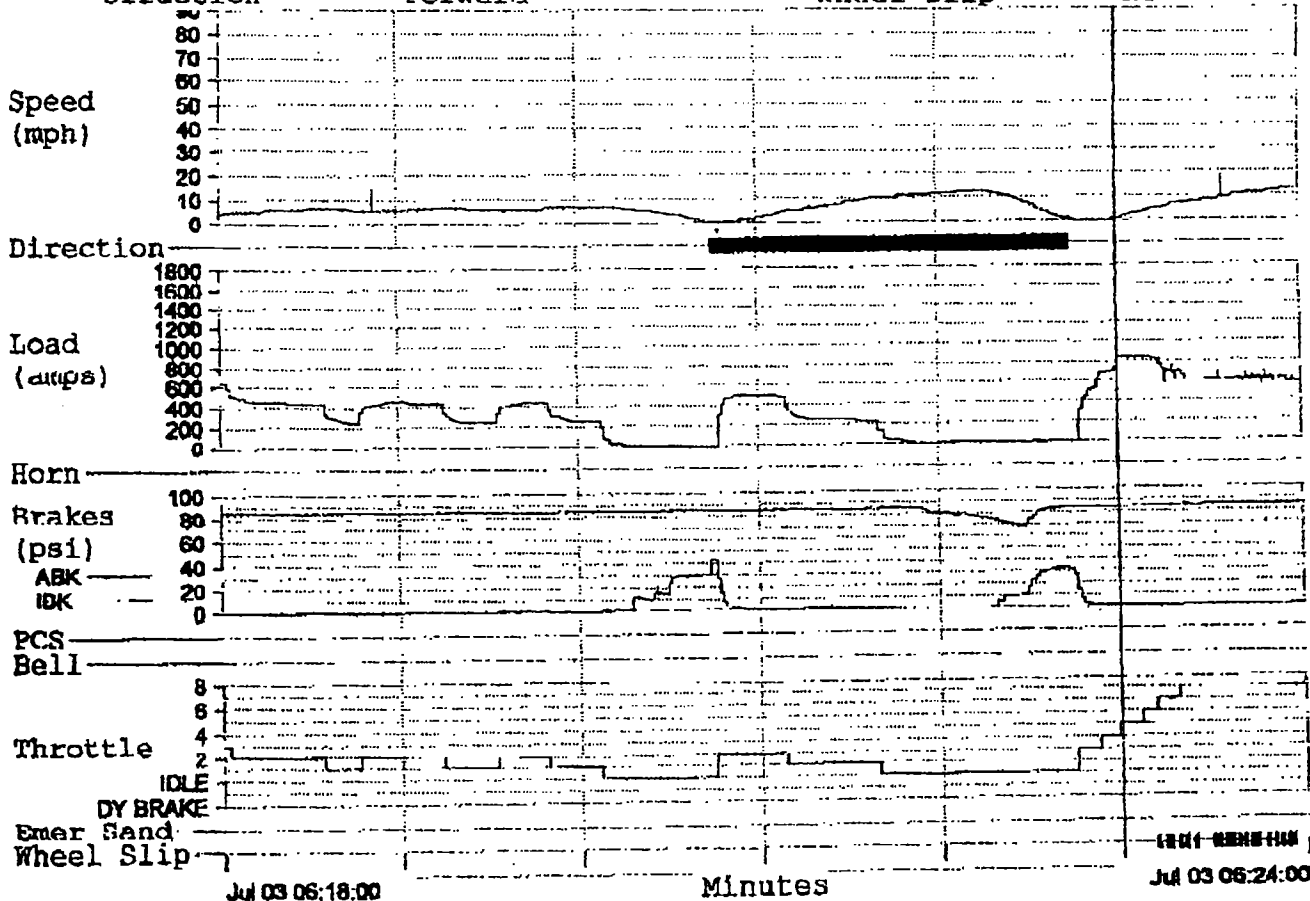
/.

WABCO Railway Electronics

Detailed Analysis Plot (c)
Time baseLocation: Hartland, VT on NECR
Remarks: WJED DerailmentLocomotive 372
Recorder 0088977

Cursorline values:

Date	07/03/04	Load	843
Time	06:23:00	Horn	Off
Milepost	13.46	Auto Brake	84
POR Dist	8mi 327ft	Ind Brake	0
For Dist	8mi 327ft	PCS	Closed
Rev Dist	0mi 0ft	Bell	Off
Dist to Mark (T)	N/A	Throttle	4
Speed	1	Emer Sand	No
Direction	Forward	Wheel Slip	No



ST010381

06/07 2004 16:11 FAX

0003

2.

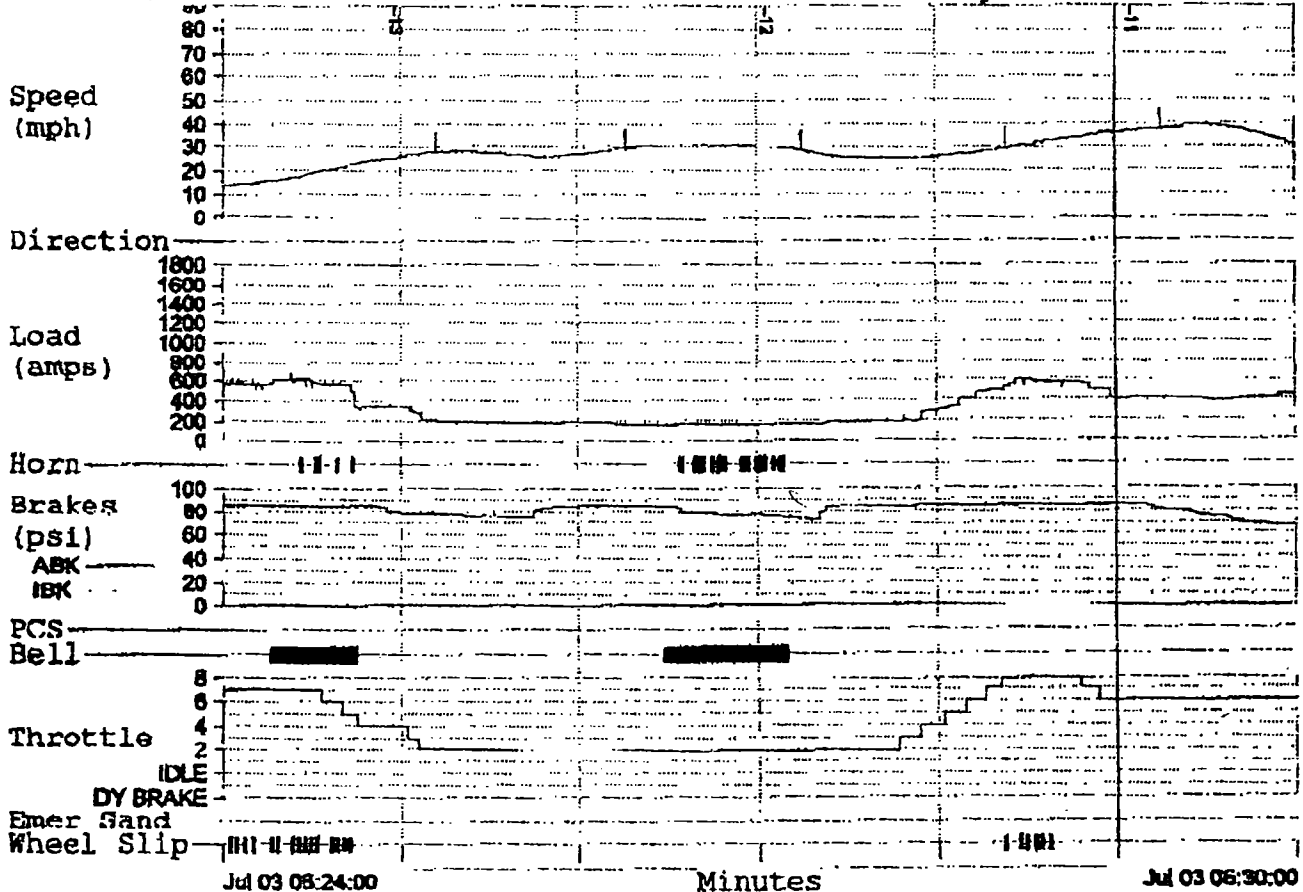
0001

WABCO Railway Electronics

Detailed Analysis Plot (c)
Time baseLocation: Hartland, VT on NECR
Remarks: WJED DerailmentLocomotive 372
Recorder 0088977

Cursorline values:

Date	07/03/04	Load	398
Time	06:29:00	Horn	Off
Milepost	11.06	Auto Brake	85
POR Dist	5mi 3489ft	Ind Brake	0
For Dist	5mi 3489ft	PCS	Closed
Rev Dist	0mi 0ft	Bell	Off
Dist to Mark (T)	N/A	Throttle	6
Speed	36	Emer Sand	No
Direction	Forward	Wheel Slip	No



ST010382

06/07 2004 16:12 FAX

004

990170

3.

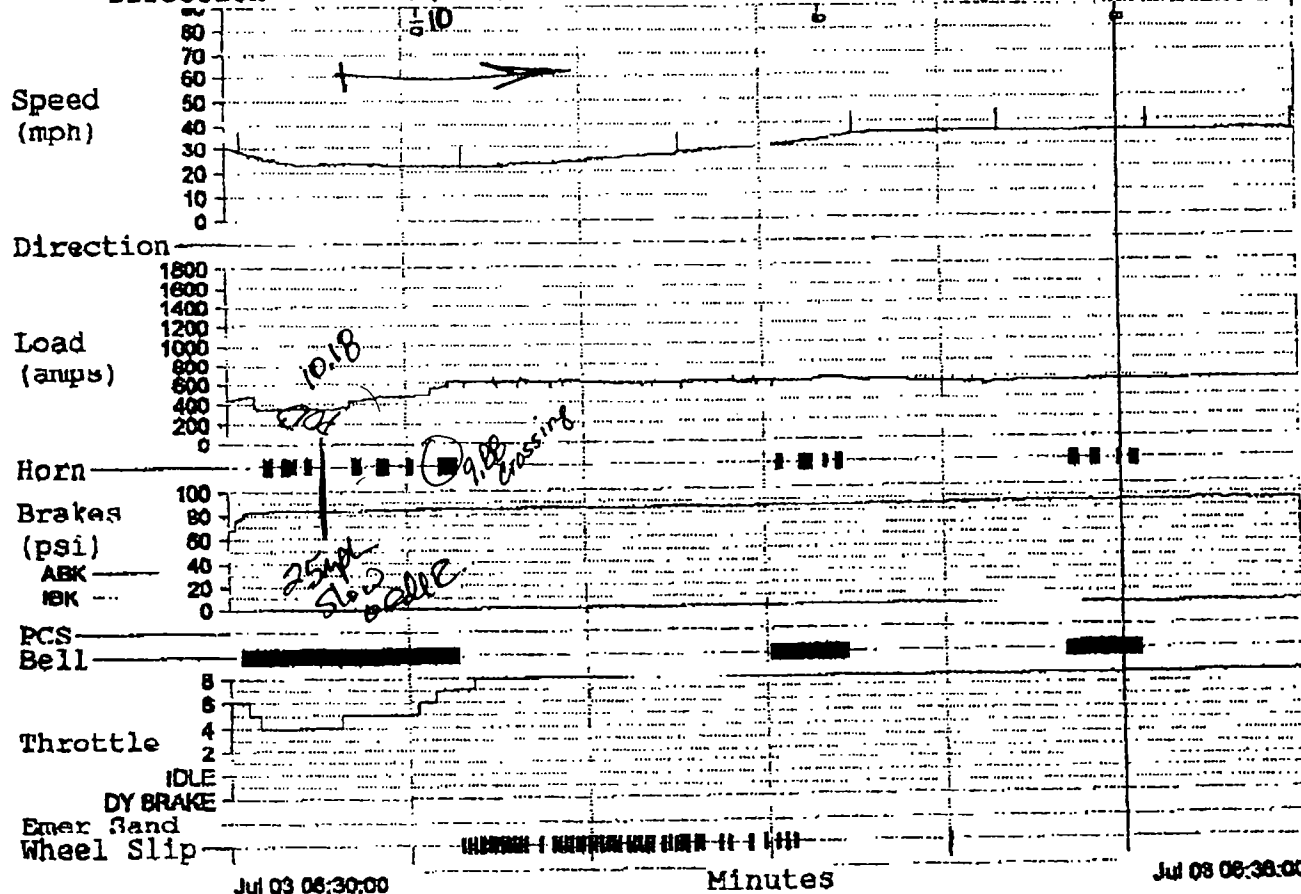
Detailed Analysis Plot (c)
Time base

WMBCO Railway Electronics

Location: Hartland, VT on NECR
Remarks: WJED DerailmentLocomotive 372
Recorder 0088977

Cursorline values:

Date	07/03/04	Load	567
Time	06:35:00	Horn	Off
Milepost	8.00	Auto Brake	86
POR Dist	2mi 3180ft	Ind Brake	0
For Dist	2mi 3180ft	PCS	Closed
Rev Dist	0mi 0ft	Bell	On
Dist to Mark (T)	N/A	Throttle	0
Speed	36	Emer Sand	No
Direction	Forward	Wheel Slip	No



06/07 2004 16:12 FAX

0005

000171

WASCO Railway Electronics

Plot (c)
Time baseLocation: Hartland, VT on NECA
Remarks: WJED DerailmentNotive 372
ier 0088977

Cursorline values:

Date 07/03/04
Time 06:41:00
Milepost 5.40
POR Dist 0mi 0ft
For Dist 0mi 0ft
Rev Dist 0mi 0ft
Dist to Mark(†) N/A
Speed 0
Direction Forward

Load 0
Horn Off
Auto Brake 0
Ind Brake 50
PCS Closed
Bell Off
Throttle Idle
Emer Sand No
Wheel Slip No

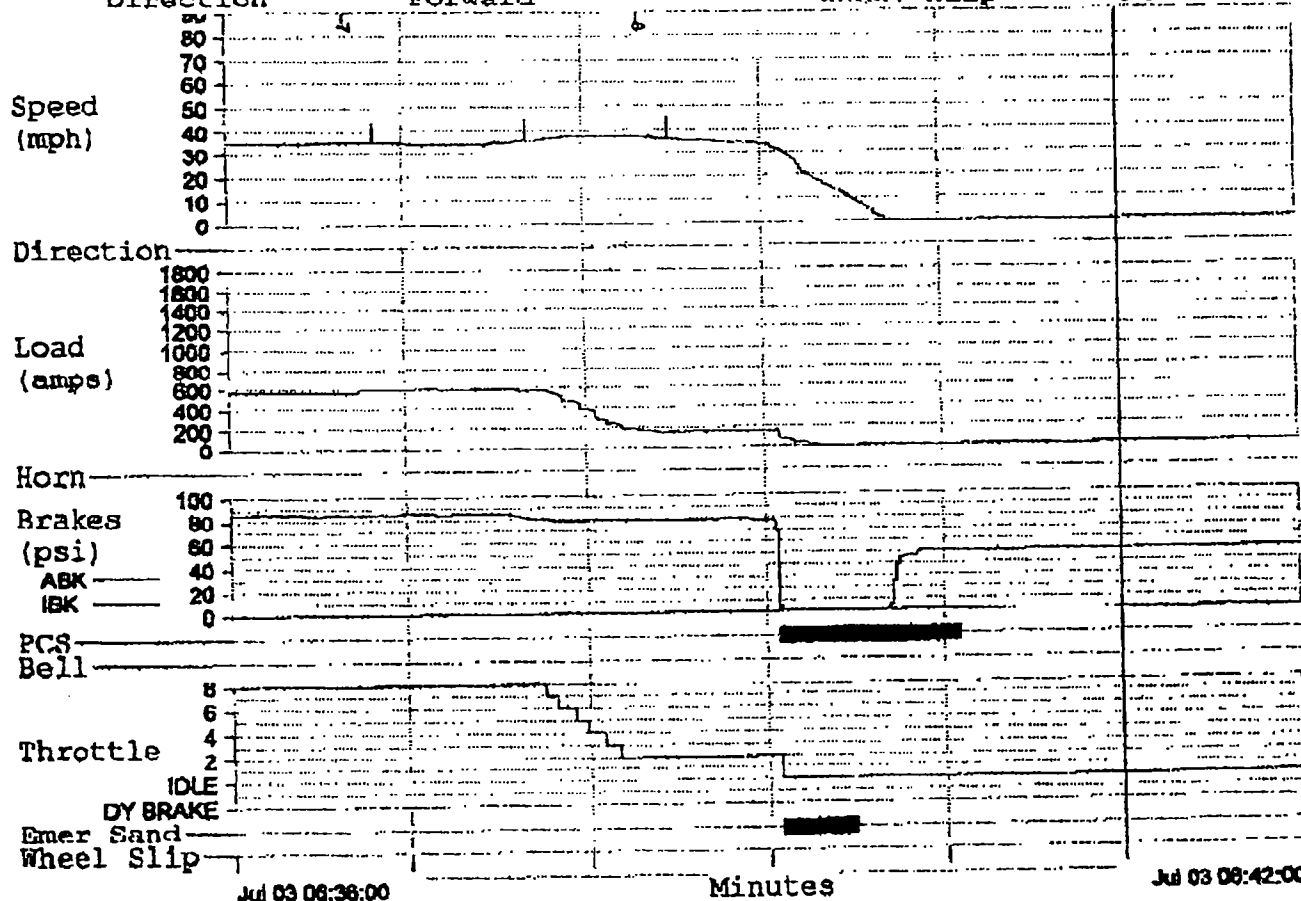


EXHIBIT 18

Train Accident Cause-Finding Manual



Train Accident Prevention & Testing
Safety & Regulatory Affairs



**CANADIAN
PACIFIC
RAILWAY**

Effective December 2002

needed as train speeds increase. In some cases, this section of tangent track does not exist, creating a point reversal. Compound and reverse curves are illustrated in Figure 6-4.

The spiral is a critical track geometry feature. At least three more car motions occur in a spiral that do not occur on full curvature or tangent track; the truck must swivel, the car body must roll and the car body must yaw. A car's reaction to an entry spiral differs from its reaction to an exit spiral, and the nature of its derailment may differ. Precisely locating a point of derailment within a full curve, an exit or entry spiral or a tangent is essential to cause finding.

The tangent to spiral point (TS & ST) and the spiral to curve point (SC & CS) are likely locations for alignment variations to occur. At these points, the truck's angular relationship to the car body is changed by the action of the wheel flange on the rail head. The repetitive lateral force that is created tends to shift the track over a period of time.

To measure curvature, hold the ends of a taut string against the gauge side of the outside rail at two points 62' apart and 5/8" below the top of the rail. At the midpoint of the string, measure and record the distance (defined as mid-ordinate) from the string to the gauge face 5/8" below the top of the rail. With a 62' chord, this measurement in inches equals the curvature in degrees; therefore, a mid-ordinate of one inch indicates a curve of one degree and two inches equals two degrees and so on. When the outside (high) rail has been rolled out of the tie plates but the inside (low) rail remained intact, pre-derailment alignment measurements can be estimated by holding the string against the field side of the low rail and measuring the mid-ordinate.

- * Alignment defects cause unbalanced dynamic forces on the track which frequently cause or amplify cross level defects. Similarly, cross level defects can cause alignment defects, so a geometry defect can feed upon itself and worsen quickly. The combination of forces from alignment and surface defects in the same location (for example, an alignment kink and a low joint on the outside rail) has a cumulative effect much greater than either defect alone.

Track Buckling - During hot weather or rising temperatures, particularly in afternoon hours during spring or summer months, track may have a tendency to buckle. Buckled track is defined as track that is severely out of alignment during very hot weather. The misalignment can vary from a few inches up to 30 inches. When a track is severely misaligned in a derailment during very hot weather, the Investigating Team must be especially careful to find the correct derailment cause. Do not automatically conclude the cause was track buckling. Find the cause for the misalignment and determine if that caused the derailment or resulted from it.

Track and operating conditions listed below should be thoroughly investigated to determine the derailment cause. Trains do not always derail on buckled track. An emergency brake application may increase the misalignment and cause a derailment. It would be incorrect to apply Code T109 in this instance. Instead, a code which identified the root cause of the excessive brake application (e.g. codes E00C or H511) should be applied.

Estimate rail temperature at time of derailment. Determine initial rail laying temperature, date adjusted, adjusted temperature, recent track disturbances and subsequent number of trains.

Equilibrium elevation is based on the formula:

$$e = 0.0007 \times (V^2) \times D$$

where: e = Superelevation in inches

V = Speed in miles per hour

D = Degree of curve

If train speed is high enough that the curve has insufficient superelevation (called underbalance), track, equipment and lading damage can occur. Derailment may result from either equipment overturning or the rail rolling out from under the train. Freight trains ride reliably at 1-1/2" to 2" underbalanced. Passenger trains ride comfortably at 3" underbalance. If train speed is low enough that the curve has too much superelevation (called overbalance), most of the weight transfers to the inside rail. The outer wheels, with a lighter vertical load, may lift off the outside rail. If alignment and surface irregularities are present, covered hoppers and other high centre of gravity 100-ton cars may derail with less than 3" overbalance. Passenger trains are seldom affected by this condition.

The amount of elevations required on the CPR track is determined from Curve Elevation Tables I, II, III shown in Appendix F. To establish curve elevation for freight trains on a 2-degree curve, for example, where the permissible speed of the fastest freight train is 50 mph, the minimum required elevation (1 1/2") is determined from Table II. The equilibrium elevation of 3 1/2" is found from Table I. The curve elevation selected must, therefore, be between 1 1/2" and 3 1/2".

The underbalanced elevation has the effect of placing more of the train's weight on the outer rail and produces a smoother ride provided that alignment is uniform. Standards relating curve elevation and train speeds are specified in SPC No. 2.

Track Twist (or Warp) - The difference in height between the two rails is not all that matters. The difference in superelevation measurements taken at two points is also important. This measurement is known as warp or twist. The rate of change in the elevation difference is also important, especially in spirals. Unlike tangents and full body curves, where elevation is designed to be constant (no elevation change from one level-board reading to another), spirals are designed with an "Elevation Rate of Change". The SPC No. 2 contains tables intended to simplify cross-level and curve elevation requirements for use in the field. The "Curve Easement Table" uses a formula involving easement lengths and track twist where easement lengths which exceed the minimum of 60, 45 and 39 feet respectively are based on the rate of change of elevation of 1-1/4 inches per second of time:

Design Balance Speed of Curve	Maximum Allowable Rate of Change of Elevation
40 mph	1 1/4 inches in 59 feet
30 mph	1 1/4 inches in 44 feet

Question the engine crew about what they saw, what they felt and how the locomotive reacted to the track. Buckles often occur in the middle of the train, after the locomotives have passed over the segment. An Engineering officer must complete the Buckled Track Report for all buckles. The cause of the buckle must be identified and corrective action noted.

The following track conditions contribute to track buckling:

- Improperly adjusted rail, especially when rail was laid in cold weather.
- Insufficient rail anchors or anchors not tight against ties.
- Insufficient ballast height or shoulder width.
- Track disturbed by work forces in hot weather, including tamping, lining and tie renewal.
- Alignment defect.

The following operating conditions contribute to track buckling:

- Slack action, especially in a sag or near a bridge, road crossing or railroad crossing.
- Heavy braking.
- Truck hunting.
- All or most traffic traveling in one direction.
- Dynamic effects of train movement on track at high rail temperatures.

6.1.3 Surface

Cross-level and Superelevation - Cross-level is the difference in height between the top of one rail and the top of the opposite rail. Tangent track cross-level should be zero. In curves, the outer rail is intentionally raised above the inner rail to partially overcome centrifugal force. This difference is called "superelevation".

Cross-level is measured to the nearest 1/8" by a track level-board placed across both rails. Before taking any readings, the accuracy of the level-board should be checked. First, place the board on a portion of level track and note the position of the bubble. Then, rotate the board 180 degrees and check to see that the bubble moves to the same position. A record of design superelevation and spiral lengths for each main track curve is maintained by the service area. Tapes from the last track geometry vehicle inspection, if recent, can also be useful.

Equilibrium Elevation - Equilibrium (balanced) elevation is the elevation which exactly overcomes the effect of negotiating a given degree of curvature at a given speed. A train negotiating a curve with equilibrium elevation at the given speed will place an equal amount of its weight on each rail. Since trains operate at a variety of speeds and sometimes stop in curves, no amount of elevation will be perfect under all conditions.